United States Court of Appeals

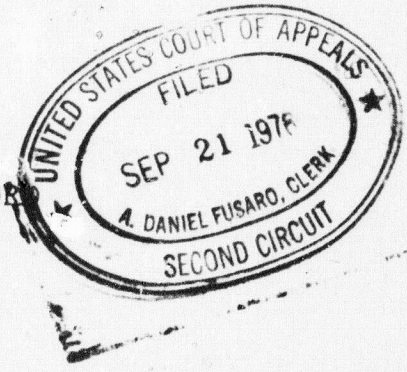
for the Second Circuit

APPENDIX

76-5025

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-5025



IN THE MATTER OF
THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY,
DEBTOR

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX

PAGINATION AS IN ORIGINAL COPY

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RECEIVED
JAN 25 1973
OFFICE OF
GENERAL COUNSEL

Petition for Order No. 789

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30223

APPLICATION BY LAWRENCE W. IANNOTTI, SUCCESSOR TRUSTEE, FOR INTERIM COMPENSATION AND ALLOWANCE FOR ACTUAL AND REASONABLE EXPENSES AND JOINT PETITION TO REVIEW AND SET ASIDE REPORT AND ORDERS OF THE INTERSTATE COMMERCE COMMISSION REGARDING MAXIMUM LIMITS OF INTERIM COMPENSATION

Now come, Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage, dated as of July 1, 1947, and Tyler, Cooper, Grant, Bowerman & Keefe, as his counsel and for the purpose hereinafter set forth, and respectfully represent that:

1. Jurisdiction to enforce, enjoin, set aside, annul, or suspend, in whole or in part, orders of the Interstate Commerce Commission (the "Commission") arising out of the referral to the Com-

1a

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mission for determination of a question or issue regarding interim compensation and/or an allowance for actual and reasonable expenses of indenture trustees is vested in this Court by Section 77(c)(12) of the Bankruptcy Act, 11 U.S.C. § 205(c)(12), 28 U.S.C. § 1336(b) and 28 U.S.C. § 1398(b).

2. The jurisdiction of this Court is invoked under Sections 77(a) and 77(c)(12) of the Bankruptcy Act, 11 U.S.C. §§ 205(a) and 205(c)(12), 28 U.S.C. § 1336(b), 28 U.S.C. § 1398(b), Section 10 of the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, and Order No. 691, dated March 27, 1973, in these proceedings.

3. Petitioner Lawrence W. Iannotti ("Petitioner") was appointed Successor Trustee under the Debtor's First and Refunding Mortgage, dated as of July 1, 1947, by Order No. 650 of this Court, dated July 29, 1971.

4. Tyler, Cooper, Grant, Bowerman & Keefe ("Counsel") was appointed counsel to Petitioner in these proceedings by Order No. 655 of this Court, dated September 3, 1971.

5. By petition dated February 9, 1973, Exhibit A hereto (the "Petition"), Counsel applied for Order No. 691 from this Court ordering transmitted to the Commission Counsel's petition for interim compensation for the period July 1, 1971 through December 31, 1972 pursuant to Section 77(c)(12) of the Bankruptcy Act, 11 U.S.C. § 295(c)(12). Some of the services for which compensation was sought were rendered by the Successor Trustee. By Order No. 691, dated March 27, 1973, this Court ordered the Petition transmitted to the Commission, reserving jurisdiction to consider and pass upon the allowance of interim compensation to Counsel upon receipt by this Court of the Commission's report regarding the maximum limits of such allowance.

6. By Order dated November 9, 1973 in Finance Docket No. 21669, Exhibit B hereto, the Commission ordered that modified procedure pursuant to Rules 45 through 54 of the Commission's Rules of Practice, 49 C.F.R. §§ 1100.45-1100.54, be used in its proceeding regarding the Petition, that Counsel be given until

December 24, 1973 to file verified statements in support of the Petition, that protestants have until January 23, 1974 to file any opposing verified statements, and that Counsel have until February 12, 1974 to reply thereto. Counsel submitted a verified statement and other evidence, Exhibit C hereto, in support of the Petition within the time limit set by the Commission. No one filed opposing verified statements within the time limit set by the Commission or thereafter.

7. By Report and Order of February 5, 1975 in Finance Docket No. 21669, reported at 348 ICC 31 *et seq.*, Exhibit D hereto, the Commission held that the reasonable maximum limit of interim compensation to Counsel and/or the allowance for actual and reasonable expenses incurred by Petitioner to be paid out of the Debtor's estate for the period July 1, 1971 through December 31, 1972 be fixed at zero.

8. Pursuant to Rules 101(b) and (d) of the Commission's Rules of Practice, 49 C.F.R. §§ 1100.101(b) and (d) and an extension of time granted by the Commission, Counsel filed with the Commission a Petition for Reconsideration and Rehearing, Exhibit E hereto, dated April 29, 1975.

9. By Order dated October 9, 1975 in Finance Docket No. 21669, Exhibit F hereto, the Commission denied Counsel's Petition for Reconsideration and Rehearing. Under Rule 101(a)(2) of the Commission's Rules of Practice, 49 C.F.R. § 1100.101(a)(2), said Order is a final order of the Commission, and thus Petitioner and Counsel have exhausted their administrative remedies before the Commission.

10. Under Section 77(c)(12) of the Bankruptcy Act, 11 U.S.C. § 205(c)(12), it is unclear whether an indenture trustee or its counsel should be the moving party seeking payment for services. In his affidavit, Exhibit 1 to Counsel's Petition for Reconsideration and Rehearing, E hereto, Petitioner stated that to the extent necessary the Petition should be deemed filed by him for an interim allowance for actual and reasonable expenses. Such procedure seems more nearly consonant with the language of Sec-

tion 77(c)(12). To protect its rights of appeal and avoid any problems of jurisdiction, Counsel hereby joins as a joint petitioner in this petition to the extent that it is a petition to review and set aside the Commission's Report and Orders, Exhibits D and F hereto. For such purposes, Counsel is and should be deemed a joint petitioner seeking review and the setting aside of such Report and Orders and, to the extent necessary, requesting the other relief prayed for herein.

11. The Report and Orders of the Commission, Exhibits D and F hereto, are contrary to the only evidence of record, are arbitrary and capricious, constitute an abuse of administrative discretion, and are unlawful for the reasons that:

A. The Commission's finding that it could not determine any benefit inuring to the Debtor's estate from Counsel's services is not supported by substantial evidence of record, but is contrary to the only evidence of record which demonstrates benefit.

B. The Commission's definition of benefit is unduly narrow and conflicts with prior decisions of the Commission and the federal courts on the benefit of counsel's and parties' services in reorganization proceedings.

C. The largest share of Counsel's efforts was directed at protecting the Debtor's claim against The Penn Central Transportation Company and therefore benefited the Debtor's estate.

D. The Commission's finding regarding duplication is not supported by substantial evidence of record, is contrary to the only evidence of record, is unduly narrow, and conflicts with prior decisions of the federal courts and the Commission.

E. The Commission's ruling as to duplication is erroneous because it equates any joint undertaking with unnecessary duplication.

F. The Commission's rulings as to benefit and duplication are inconsistent with Petitioner's and Counsel's fiduciary, contractual and legal responsibilities and their obligations to act as prudent men would in the protection of their own property, put Petitioner, Counsel and others similarly situated to a choice between possible personal liability for inaction and the risk of financial loss and penalty from action, will impede or deter a fair and adversary process, will discourage reasonable creditor participation, and will reduce creditor protection in reorganization proceedings, contrary to the intent of the Bankruptcy Act.

G. The Commission's Report and Orders overlook the benefit to the Debtor's estate of having adverse parties active in the Debtor's reorganization to assure this Court, the Commission, and the New Haven Trustee that the actions taken are in the best interest of the Debtor's estate.

H. The Commission's ruling as to benefit is wrong, as a matter of law and fact, in that it only equates tangible returns with benefits to the Debtor's estate and ignores intangible benefits.

I. The Commission's Report ignored the fact that these proceedings principally affect the Debtor's First Mortgage Bondholders, and Petitioner and Counsel were obligated, as a matter of law, to protect the interests of such Bondholders directly and vigorously.

J. The Commission's rulings as to duplication and benefit ignore the fact that Petitioner and Counsel were court-appointed because this Court believed continuing and active representation of the First Mortgage Bondholders was necessary, proper and beneficial to the Debtor's estate; the Commission's ruling, if let stand, could compel the failure of the trust created for the benefit of such Bondholders and frustrate the intent of the Court in its appointment of Petitioner and Counsel in these proceedings.

K. The Commission's suggestion that Petitioner was a volunteer or that Counsel's services were unsolicited is contrary to the only evidence of record, their court appointment and the provisions of the Debtor's First and Refunding Mortgage (the "Indenture").

L. The Commission's finding that Counsel should seek compensation from the First Mortgage Bondholders is based upon a misinterpretation of law, is impracticable, would effectively deprive such Bondholders of legal representation, and is tantamount to a taking of property without due process of law in violation of the Fifth Amendment to the United States Constitution.

M. The Commission's Report and Orders disregard the Petitioner's and Counsel's contractual right to compensation and/or reimbursement under the Indenture.

N. The Commission's Report and Orders are inconsistent with its decisions under Section 77(c)(12) of the Bankruptcy Act regarding interim compensation or allowance of actual and reasonable expenses in other railroad reorganizations.

O. The Commission's finding with respect to variable expenses is not supported by substantial evidence of record, but is contrary to the only evidence before the Commission.

12. By Order No. 754 in these proceedings, this Court ordered transmitted to the Commission a petition by Petitioner for allowance for actual and reasonable expenses incurred for legal services for the period January 2, 1973 through June 28, 1974. Said Petition, Exhibit G hereto, is now pending before the Commission, but has not been acted upon on the merits. Said petition also includes services rendered by Petitioner.

13. In its report of February 5, 1975, Exhibit D hereto, the Commission stated:

"The burden of proof is on petitioner to show that his services benefited the estate and did not duplicate the effort

of the trustee and his counsel, since the estate should pay only once for a service. Such petitioner should segregate administrative and routine services for indenture trustee over which the Commission does not have jurisdiction." 348 ICC at 37.

14. In accordance with the Commission's suggestion, Petitioner has reviewed the services rendered by him during the period July 1, 1971 through June 28, 1974. Petitioner has concluded that any distinction between his activities as Trustee and his activities as his own counsel is formal and artificial since almost all of his services have been rendered in connection with legal proceedings in this Court or elsewhere, such services are identical to representation *pro se* aided by Counsel, the amount of compensation sought is identical on an hourly basis, and any allowance or compensation granted will be firm income of Counsel under said firm's policy regarding payments to its lawyers as directors and trustees. Consequently, all services rendered by Petitioner are deemed services rendered as Trustee. Further, Petitioner has analyzed the services performed by him as Successor Trustee, as recommended by the Commission, with a view to determining which services could and should be considered administrative and routine in the circumstances. The circumstances, in the view of the Petitioner, necessarily include the facts that Petitioner was appointed by this Court only after a lengthy and diligent search for a willing financial institution had been unsuccessful and that, to be able to perform at all satisfactorily, Petitioner was required to review the course of the proceedings up to the time of his appointment. In addition, Petitioner must remain informed of proceedings affecting the Debtor's estate and the First Mortgage Bondholders, and must, from time to time, take at least minimal steps to protect said Bondholders. Analyzed in that manner, it appears that very few, if any, of the services rendered were not administrative and routine. Thus viewed, virtually all of Petitioner's services are outside the ambit of Commission jurisdiction.

Similarly, the services rendered by Counsel were analyzed and the services identified as those performed in connection with the administrative and routine duties of the Successor Trustee and those not so connected. The variable expenses incurred by Counsel and the Successor Trustee have also been segregated by the nature of the services in connection with which they were incurred. In regard to Counsel's services, one other circumstance is significant. In Petitioner's Petition for Order No. 655 (page 8797 in these proceedings), Petitioner stated that he required counsel "particularly with respect to the additional proceedings arising out of the mandate of the Supreme Court of the United States in the New Haven Inclusion cases, 399 U.S. 392, and the order of this Court entered on June 22, 1971, pursuant to said mandate." Paragraph 5 of said petition also specifically stated that Counsel would assist Petitioner in those proceedings. That petition also contemplated direct involvement in the Penn Central reorganization. Petitioner and Counsel were both appointed because petitioner's predecessor had a conflict of interest arising out of the Penn Central reorganization, and they were appointed to ensure that the Debtor's claim against The Penn Central Transportation Company would be vigorously pursued.

The foregoing analyses produced, in the almost unique circumstances of these proceedings, the conclusion that virtually all of the services performed by Petitioner and Counsel are broadly of a routine and administrative nature required to be performed by the terms of the Indenture and the appointment of this Court. Such services were largely non-discretionary and, while of benefit to the Debtor's estate in the proper sense of the term "benefit", are entitled to immediate payment and reimbursement regardless of benefit and without the necessity of Commission approval.

15. More particularly, the services rendered may be analyzed by reference to the documents already a part of the record in these proceedings and in Finance Docket No. 21669 of the Commission, Exhibits A, C, E, and G, as hereafter amplified.

Appendix A to the Petition of February 9, 1973, ("Appendix") classifies the services rendered by Petitioner and Counsel during the period July 1, 1971 through December 31, 1972. Subdivision A of the Appendix describes services performed in connection with matters relating generally to the Debtor's reorganization and the duties of the Successor Trustee. The total time expended in the performance of those services, as set forth correctly in Exhibit C hereto at Page 2, was 162 hours. Of that total, Petitioner spent 90 hours, the remainder being spent by Counsel. Those services were routine in the sense that they constituted a basis for the proper performance by Petitioner and Counsel of the duties thereafter required of them — routine, administrative, and otherwise. Without an understanding of the status of the reorganization proceedings as of July 1, 1971, the prior course of those proceedings, and the conduct of those proceedings during the period July 1, 1971 through December 31, 1972, Petitioner and Counsel would have been completely unable to meet the responsibilities imposed upon them by the Indenture and their appointment by this Court. The balance of their services concerned various routine matters in this Court. Quite obviously, those services and the expenses in connection therewith were routine and administrative. Petitioner should, therefore, receive interim compensation of $6,150.00 for those services rendered by him, together with $2,340.00 as an interim allowance for actual and reasonable expenses incurred for legal services and $363.96 for out-of-pocket expenses.

Subdivision B of the Appendix recites in detail the services rendered in connection with the appeal taken by the Trustees of the Property of The Penn Central Transportation Company in the United States Court of Appeals for the Second Circuit. This Court is fully familiar with that litigation. The total number of hours devoted to that appeal was 370, of which Petitioner expended 204 hours and Counsel the rest. Two aspects of that work should be mentioned. First, whether or not Petitioner participated directly in the appellate process, a substantial part of the research would nonetheless have had to be done since it consisted in large

part of a study of the decisions of the Supreme Court of the United States, various Courts of Appeals, and this Court in these very proceedings. It was stated above — and it cannot be too strongly emphasized — that, having been appointed by this Court, Petitioner and Counsel were obligated to inform themselves of the more important chapters in the long history of this reorganization. Coincidentally, there was pending at the time of their appointment the appeal referred to in subdivision B of the Appendix and the work was done in connection with it. Second, there was no unnecessary duplication. For example, Petitioner was the only party representing the New Haven interests who raised the question of the jurisdiction of the Court of Appeals. For such services, Petitioner should receive interim compensation of $13,725.00, an interim allowance for actual and reasonable legal expenses of $5,520.00 and $513.17 for expenses.

Subdivision C of the Appendix covers services rendered in connection with appeals to the United States Court of Appeals for the Third Circuit from Orders of the Penn Central Reorganization Court directly affecting these proceedings. Such services required 188 hours, of which Petitioner rendered 50 hours and Counsel the rest. In light of Petitioner's and Counsel's fiduciary obligations and Court appointment and in order to protect the outcome of the work described in subdivision B of the Appendix, such work was necessary, administrative and routine. Those appeals involved Petitioner's and Counsel's only appearance in the Third Circuit. The research involved was basic — the relationship of the two reorganization proceedings, the nature of the claim of the Debtor's estate and the means of preserving the Debtor's secured status. In addition, since time was limited, speedy action was required. For these reasons, interim compensation in the amount of $3,350.00 should be granted to Petitioner, and Petitioner should be granted an interim allowance for actual and reasonable expenses in the amount of $4,645.00 for legal expenses and $357.27 for out-of-pocket expenses.

Subdivision D of Appendix covered 66 hours of work required to perfect appeals to the Supreme Court of the United States. Of such hours, 42 were rendered by Petitioner and 24 by Counsel. The small number of hours involved reflects the research already done and familiarity with the issues. The lack of duplication is indicated by the preservation of Petitioner's jurisdictional argument and the filing of a supporting response to the New Haven Trustee's petition for a writ of certiorari from the Third Circuit in lieu of a separate petition. As services required to protect the First Mortgage Bondholders and to act as prudent fiduciaries, such work was necessary, beneficial, unduplicative, administrative and routine. For such services, Petitioner should receive interim compensation in the amount of $2,805.00, an allowance of $805.00 for actual and reasonable expenses incurred by Counsel and $468.19 for out-of-pocket expenses.

Subdivision E of the Appendix covers the services rendered in connection with the Penn Central reorganization. These services only involved 69 hours over an eighteen month period, of which 25 were expended by Petitioner and the balance by Counsel. These services primarily consisted of efforts at remaining informed about the Penn Central proceedings and determining what position should be taken by the New Haven Trustee in those proceedings. In general, Petitioner has not become directly involved in the Penn Central reorganization, and his involvement has consisted mainly of advising the New Haven Trustee of his views. Disallowance of compensation for such minimal services would totally exclude even the most rudimentary participation in proceedings whose outcome will affect the success of this reorganization. These services were administrative and routine in nature and the minimal amount required consistent with Petitioner's and Counsel's responsibilities. For these services, Petitioner should be awarded interim compensation in the amount of $1,630.00, an interim allowance for actual and reasonable expenses in the amount of $1,480.00 for legal services, and $148.32 for out-of-pocket expenses.

16. By Petition for Order No. 754, Petitioner requested that the Court transmit said petition to the Commission to determine the maximum limits of allowance for actual and reasonable expenses incurred for the period January 2, 1973 through June 28, 1974. For the reasons set forth below, such services were administrative and routine and should be compensated, without prior Commission approval, in the amounts requested.

As said petition and Appendices A and B thereto indicate, such services were classified under five headings. Subdivision A covered services rendered in connection with these proceedings. Such services principally involved possible plans for reorganizing the Penn Central, acting to have the New Haven Trustee move to dismiss the Penn Central reorganization and thereby helping to terminate these proceedings. Such services consisted of merely 55 hours and 30 minutes, of which Petitioner rendered 20 hours and Counsel the balance. As the amount involved for eighteen months indicates, these activities were minimal, administrative and routine. Consequently, Petitioner should receive interim compensation for such services in the amount of $1,400.00, an interim allowance for actual and reasonable expenses for legal fees in the amount of $1,770.00 and $184.47 for out-of-pocket expenses.

Subdivision B concerned matters pending in the Penn Central reorganization. Such services were rendered either immediately prior to or following the Commission's consideration of various plans for reorganizing the Penn Central. Since the outcome of the Penn Central reorganization directly affects these proceedings, some participation by Petitioner and Counsel was essential and consistent with their fiduciary and legal obligations. As the petition clearly indicates, much of the work done involved review of the proposed plans of reorganization and matters pending in the Penn Central reorganization. Such efforts were minimal and, although Counsel attended one hearing, Petitioner did not enter an appearance in the Penn Central proceedings. Throughout this period, the New Haven Trustee's counsel acted as lead counsel. For these reasons, the services, which required 119 hours and 45 minutes, were minimal, administrative and routine. Of such

time, Petitioner expended 66 hours and should be granted interim compensation in the amount of $4,630.00, an allowance of $2,600.00 for actual and reasonable expenses incurred by Counsel, and $612.98 for out-of-pocket expenses.

Subdivision C involves the bulk of the time expended. Such services consisted of participation in proceedings before the Commission in connection with the Penn Central's reorganization. Such services required 261 hours, of which Petitioner expended 99 hours and Counsel the balance. Appearance at a pre-hearing conference was essential in order to determine how the proceedings would be conducted and to state Petitioner's position. Reliance on the New Haven Trustee's counsel was impossible since the Trustee and the New Haven creditor interests, including Petitioner, were opposed. During the course of the hearing, the New Haven creditor interests scheduled their appearances so that generally only one lawyer was present at any time. Involvement in the development of a plan of reorganization is central to an indenture trustee's responsibilities in a reorganization proceeding. Independent action is axiomatic in the formulation of a plan. Consequently, the services described under subdivision C were administrative and routine. Petitioner should, therefore, be awarded interim compensation in the amount of $6,930.00 for such services, an allowance for actual and reasonable expenses in the amount of $7,800.00 for legal expenses, and an allowance of $697.92 for out-of-pocket expenses.

Subdivision D involves various proceedings arising out of the Regional Rail Reorganization Act of 1973 (the "Act"). Such services involved 130 hours, of which 72 were expended by Petitioner and the balance by Counsel. The responsibility for representing the Debtor's estate in proceedings seeking to have the Act declared unconstitutional has been borne, quite properly, by the New Haven Trustee. Petitioner and Counsel were, however, required to review the Act, to assess its impact upon this proceeding and the Debtor's estate, to attend a meeting of the various New Haven creditor interests and other major creditor and governmental interests in Washington, D.C., to which they were in-

vited by the New Haven Trustee, and to appear before this Court. Petitioner attended one hearing in the Penn Central Reorganization Court. Such services were minimal, administrative and routine. Consequently, Petitioner should be awarded interim compensation in the amount of $5,040.00 for such services, an allowance for actual and reasonable expenses in the amount of $2,700.00 for legal services rendered by Counsel and an allowance of $370.25 for out-of-pocket expenses.

Subdivision E covered advice by Counsel regarding various administrative matters involving Petitioner. Such services cover 17 hours and 45 minutes, were clearly administrative and routine, and an interim allowance of $880.00 for such legal services and $764.85 for expenses should be granted.

WHEREFORE Petitioner and Counsel (to the extent noted above) respectfully pray and request:

1. That this Court enter an order prescribing the manner of notice of hearing to be held on this Petition and fixing a time and place for such hearing;

2. That this Court set aside the Commission's Report and Orders complained of herein, and remand the matter to the Commission directing that it find that the maximum reasonable limits of allowance for actual and reasonable legal expenses or interim compensation for Counsel for the period July 1, 1971 through December 31, 1972 be $42,450 plus $1,850.91 in variable expenses; or

3. In the alternative, that this Court direct that the Debtor pay Petitioner interim compensation in the amount of $27,660.00, an interim allowance for actual and reasonable expenses incurred for legal expenses in the amount of $14,790.00 and an allowance of $1,850.91 for out-of-pocket expenses for the period July 1, 1971 through December 31, 1972, and $18,000.00, $15,750.00, and $2,630.47 for interim compensation, an allowance for actual and reasonable legal expenses, and out-of-pocket expenses, respectively, for the period January 2, 1973 through June 28, 1974; and

4. That this Court allow such other and further relief as it may deem proper in the premises.

Dated at New Haven, Connecticut, this 22nd day of December, 1975.

LAWRENCE W. IANNOTTI,
Successor Trustee under the Debtor's First and Refunding Mortgage, Dated as of July 1, 1947

By LAWRENCE W. IANNOTTI,
LAWRENCE W. IANNOTTI, as
Successor Trustee

TYLER, COOPER, GRANT, BOWERMAN & KEEFE
As Counsel and Petitioner to the extent noted above

By IRVING S. SCHLOSS

IRVING S. SCHLOSS
P.O. Box 1936
205 Church Street
New Haven, Connecticut 06509

STATE OF CONNECTICUT }
COUNTY OF NEW HAVEN } ss.: New Haven; December 22, 1975

Lawrence W. Iannotti, Successor Trustee under the New York New Haven and Hartford Railroad Company's First and Refunding Mortgage, dated as of July 1, 1947, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

LAWRENCE W. IANNOTTI,
Successor Trustee as aforesaid

Subscribed and sworn to before me this 22nd day of December, 1975.

IRVING S. SCHLOSS
Notary Public

(Notarial Seal)

My Commission Expires: March 31, 1977

STATE OF CONNECTICUT)
COUNTY OF NEW HAVEN) ss.: New Haven; December 22, 1975

Donald F. Keefe, a member of the firm of Tyler, Cooper, Grant Bowerman & Keefe, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

DONALD F. KEEFE

Subscribed and sworn to before me this 22nd day of December, 1975.

IRVING S. SCHLOSS
Notary Public

(Notarial Seal)

My Commission Expires: March 31, 1977.

ORDER OF NOTICE

Upon reading the foregoing petition, it is ORDERED:

1. That said petition is hereby set down for hearing in this Court at 10:30 o'clock, A.M., or as soon thereafter as the Court can hear the same, on the 20th day of January, 1976 at New Haven, Connecticut.

2. That the petitioners be and they hereby are directed to give notice of said hearing by timely mailing copies of said petition without exhibits, all of which have previously been

served on the parties hereto or are matters of public record, and this order to all parties who are customarily notified of hearings in these proceedings.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: December 23, 1975.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of December, 1975, in accordance with the order of this Court, I served a copy of the foregoing petition without exhibits, all of which have previously been served on the parties hereto or are matters of public record, and the order of this Court on all parties who are customarily notified of hearings in these proceedings, by depositing a copy thereof in the United States Mails, first-class postage prepaid, addressed to such parties at their last known address.

IRVING S. SCHLOSS
Attorney

RECEIVED
OFFICE OF
GENERAL COUNSEL

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

MODIFICATION OF PETITION FOR ORDER NO. 789

NOW COME, Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage, dated as of July 1, 1947, and Tyler, Cooper, Grant, Bowerman & Keefe, as his counsel for the purpose set forth in Petition for Order No. 789, and respectfully represent that:

1. On December 23, 1975, the Petitioners filed Petition for Order No. 789 with this Court seeking review and the setting aside of the Report and Orders of the Interstate Commerce Commission ("the Commission"), described in said Petition. Said Petition also contained an application for interim compensation and an allowance for actual and reasonable expenses for the period July 1, 1971 through June 28, 1974 on behalf of Petitioner Lawrence W. Iannotti, Successor Trustee as aforesaid (the "Successor Trustee"). Said Petition is presently pending before this Court, a hearing having been scheduled for April 14, 1976.

2. On February 5, 1976, the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 (the "RRRRA"), was enacted into law.

3. Section 618(b) of the RRRRA terminated the powers and jurisdiction of the Commission in this proceeding and vested them in this Court for the reasons stated in the Petition for Order No. 795, dated March 11, 1976, filed by Richard Joyce Smith, as the Trustee of the property of the Debtor, which Petition is pending before this Court.

4. On January 26, 1976, the Successor Trustee withdrew his pending application before the Commission for the allowance of actual and reasonable expenses for the period January 1, 1973 through June 28, 1974, which application had been transmitted to the Commission pursuant to Order No. 754 in these proceedings.

5. The Commission no longer has jurisdiction of either application referred to in Petition for Order No. 789. This Court may and should take judicial notice of the various petitions, documents, exhibits and applications to which reference is had in Petition for Order No. 789. All of said materials have previously been provided to all parties customarily given notice of hearings in these proceedings.

6. Petition for Order No. 789 is hereby modified in the following respects:

(a) Paragraph 12 of the Petition for Order No. 789 is hereby amended to reflect the facts stated in Paragraph 4 of this Petition.

(b) In the event the Successor Trustee's Application for Interim Compensation and Allowance for Actual and Reasonable Expenses contained in the Petition for Order No. 789 is granted in full, the Petitioners' Joint Petition for Review contained in said Petition will be withdrawn as moot.

19a

(c) Paragraphs 13, 14, 15 and 16 of the Petition for Order No. 789 are hereby amended to remove all references to the Commission's jurisdiction and all references to administrative and routine services should be deemed to include "watchdog" services required of the Petitioners in their capacity as court-appointed Successor Trustee and counsel to the Successor Trustee.

(d) The second prayer for relief, requesting a remand to the Commission, is hereby withdrawn.

7. By virtue of Section 618(b) of the RRRRA, this Court has the jurisdiction and power to grant the relief requested by the Petitioners.

WHEREFORE, the Petitioners respectfully pray and request:

1. That this Court grant the relief requested in Petition for Order No. 789, as above modified; more specifically the relief requested in paragraph 3 of the prayers for relief set out in that petition; and

2. That this Court allow such other and further relief as it may deem proper in the premises.

Dated at New Haven, Connecticut this 23rd day of March, 1976.

LAWRENCE W. IANNOTTI,
SUCCESSOR TRUSTEE UNDER THE DEBTOR'S
FIRST AND REFUNDING MORTGAGE,
DATED AS OF JULY 1, 1947

BY: LAWRENCE W. IANNOTTI, as
Successor Trustee

TYLER, COOPER, GRANT, BOWERMAN & KEEFE
AS COUNSEL TO THE SUCCESSOR TRUSTEE

BY: IRVING S. SCHLOSS
P.O. Box 1936
New Haven, Connecticut 06509

STATE OF CONNECTICUT }
COUNTY OF NEW HAVEN } ss.: New Haven, March 23, 1976

Lawrence W. Iannotti, Successor Trustee under The New York, New Haven and Hartford Railroad Company's First and Refunding Mortgage, dated as of July 1, 1947, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

LAWRENCE W. IANNOTTI,
Successor Trustee as aforesaid

Subscribed and sworn to before me this 23rd day of March, 1976.

IRVING S. SCHLOSS
Notary Public

(NOTARIAL SEAL)

My Commission Expires March 31, 1977.

STATE OF CONNECTICUT }
COUNTY OF NEW HAVEN } ss.: New Haven, March 23, 1976

Donald F. Keefe, a member of the firm of Tyler, Cooper, Grant Bowerman & Keefe, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

DONALD F. KEEFE

Subscribed and sworn to before me this 23rd day of March, 1976.

IRVING S. SCHLOSS
Notary Public

(NOTARIAL SEAL)

My Commission Expires March 31, 1977.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 1976, I served a copy of the foregoing modification on all parties customarily notified of hearings in these proceedings, by depositing a copy thereof in the United States Mails, first-class postage prepaid, addressed to such parties at their last known address.

IRVING S. SCHLOSS
Attorney

Order No. 789A

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

ORDER OVERRULING AND VACATING REPORT AND ORDERS OF THE INTERSTATE COMMERCE COMMISSION REGARDING INTERIM COMPENSATION FOR INDENTURE TRUSTEE AND COUNSEL

The Joint Petition of Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage, dated as of July 1, 1947, and Tyler, Cooper, Grant, Bowerman & Keefe, as his counsel, to Review and Set Aside Report and Orders of the Interstate Commerce Commission Regarding Maximum Limits of Interim Compensation, having come on for hearing, which was duly noticed, and all parties in interest having been heard or been given opportunity to be heard, and the Court being duly advised in the premises, the Court hereby Orders and Adjudges:

1. That the Report and Order dated February 5, 1975 and the Order dated October 9, 1975 of the Interstate Commerce

Commission in Finance Docket No. 21669, Exhibits D and F to the Joint Petition, be, and they hereby are, overruled and vacated; and

2. That any entry of decision made pursuant to such Report and Orders be, and it hereby is, reversed and vacated.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: May 18, 1976.

24a

RECEIVED
OFFICE OF
GENERAL COUNSEL

Petition for Order No. 795

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

PETITION FOR ORDER RELATING TO SECTION 618(b) OF THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Richard Joyce Smith, as the Trustee of the property of the Debtor, respectfully represents:

1. The Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 (the RRRRA), was enacted into law on February 5, 1976.

2. Section 618(b) of the RRRRA, a copy of which is attached hereto as Appendix A, provides, *inter alia*, that the powers and duties of the Interstate Commerce Commission (the Commission) under §77 of the Bankruptcy Act, 11 U.S.C. §205, shall terminate as of the date of enactment of the RRRRA with respect to any railroad in reorganization under §77 but not subject to the Regional Rail Reorganization Act of 1973, 45 U.S.C. §701 *et seq.* (the Rail Act), which (a) does not operate any line of railroad and (b) has transferred all or substantially all of its rail properties to a railroad in reorganization subject to the Rail Act prior to enactment of the RRRRA. It further provides that, if the

Commission's powers and duties under §77 with respect to a railroad in reorganization are thereby terminated, such powers and duties shall be vested in the reorganization court having jurisdiction over the subject railroad.

3. The Debtor has been in reorganization under §77 of the Bankruptcy Act since July 7, 1961; by Order No. 720, this Court adjudged that the Debtor was not subject to the Rail Act; the Debtor does not operate any line of railroad; and on December 31, 1968, the Debtor transferred all its rail properties to another railroad, Penn Central Transportation Company (Penn Central), which has been in reorganization under §77 and subject to the Rail Act since its enactment.

4. Petitioner has been advised by counsel, on the basis of the foregoing, that as to reorganization proceedings of the Debtor, the powers and duties of the Commission under §77 of the Bankruptcy Act terminated as of February 5, 1976 and then vested in this Court.

5. In light of the Debtor's cessation of rail carrier operations on December 31, 1968, the powers and duties of the Commission exercised under §77 with regard to these reorganization proceedings have been mainly in two areas: (a) matters concerning approval, certification, confirmation and consummation of a plan of reorganization for the Debtor; and (b) review and determination of applications for the fixing of maximum limits of allowance under §77(c)(2) and §77(c)(12) for compensation and reimbursement of expenses.

6. Prior to enactment of the RRRRA, the Debtor's plan of reorganization had been remanded to the Commission for further proceedings, by orders of this Court, 304 F. Supp. 1136 (1969), the Supreme Court, 399 US 392 (1970), and the Court of Appeals for the Second Circuit, 457 F.2d 683 (1972).

7. Petitioner avers that, upon enactment of the RRRRA, the Commission ceased to have jurisdiction to formulate a plan of reorganization for the Debtor and that such jurisdiction vested in this Court.

8. In light of the outstanding remands to the Commission by the Supreme Court and the Court of Appeals for the Second Circuit cited above, Petitioner considers that appropriate modification of their judgments and remands is desirable in the interests of orderly future proceedings. Such modification would most appropriately be accomplished through the filing of motions or pleadings with the Supreme Court and the Court of Appeals for the Second Circuit for amendment of their judgments and issuance of new mandates, to carry out the pertinent provisions of the RRRRA.

9. There are various orders of the Commission, entered pursuant to §77(c)(2) or §77(c)(12) prior to enactment of the RRRRA, as to which proceedings have already been instituted, or are anticipated to be instituted, before the Court.

10. A matter not yet before the Court relates to an order of the Commission under §77(c)(2), served January 14, 1976, which fixed maximum limits of compensation for the firm of Geoghan, Tutrone and Grossman, special counsel to Petitioner. However, in an unexplained departure from its own normal practice, the Commission denied compensation for the time spent in preparation of the compensation petition in the detailed form required by the Commission. A formal petition for reconsideration would have been filed with the Commission by Geoghan, Tutrone and Grossman but for the intervening enactment of the RRRRA, and they now seek guidance as to the appropriate procedures by which to secure a reversal, or the equivalent, of the Commission's denial of the full compensation requested.

11. In addition to cases where the Commission had fixed maximum limits prior to enactment of the RRRRA, it is to be expected that petitions will be filed from time to time, both under §77(c)(2) and §77(c)(12), some of which are likely to relate to services rendered or expenses incurred during periods prior to February 5, 1976.

12. Petitioner considers that the adoption of procedures with respect to pending and future proceedings under §77(c)(2) and

§77(c)(12) is necessary for the orderly and economical administration of the estate.

WHEREFORE, Petitioner prays that this Court enter orders herein:

(1) Prescribing the manner of notice of hearing to be held on this petition and fixing a time and place for such hearing;

(2) After such hearing, finding and ordering that, as to this reorganization proceeding, the Court became vested, as of February 5, 1976, with all jurisdiction formerly conferred on the Commission under §77 of the Bankruptcy Act;

(3) Authorizing and directing Petitioner to file an appropriate motion or pleading with the Supreme Court of the United States for amendment of its judgment in the *New Haven Inclusion Cases* to bring it into conformity with the RRRRA* and, thereafter, to file an appropriate motion or pleading with the United States Court of Appeals for the Second Circuit with regard to its judgment entered in review of the Court's Order dated June 22, 1971 herein;

(4) Fixing procedures with regard to filing and processing of petitions under §77(c)(2) or §77(c)(12) of the Bankruptcy Act, both as to petitions now pending before the Court or hereafter filed; and

(5) For such other and further relief as the Court may deem appropriate in the premises.

Dated: March 11, 1976.

RICHARD JOYCE SMITH, Trustee of the property of The New York, New Haven and Hartford Railroad Company, Debtor.

JAMES WM. MOORE
Counsel for Trustee

(Appendix A omitted in printing)

UNITED STATES OF AMERICA
DISTRICT OF CONNECTICUT
CITY OF NEW HAVEN, CONNECTICUT } ss.:

JAMES WM. MOORE, Counsel for the Trustee of the property of The New York, New Haven and Hartford Railroad Company, Debtor, being first duly sworn, deposes and says that he has read the foregoing Petition and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

JAMES WM. MOORE

Subscribed and sworn to before me this 11th day of March, 1976.

DOROTHY E. SCHOEFFLER
Notary Public

My Commission expires March 31, 1977

(NOTARIAL SEAL)

ORDER OF NOTICE

Upon reading the foregoing Petition, it is ORDERED:

1. That said Petition is hereby set down for hearing in this Court at 11 o'clock, A.M., or as soon thereafter as the Court can hear the same, on the 14th day of April, 1976, at New Haven, Connecticut.

2. That the Trustee be and he hereby is directed to give notice of said hearing by timely mailing copies of said Petition and this Order to the Interstate Commerce Commission, the Trustees of the property of Penn Central Transportation Company, Debtor, and all other parties who are customarily notified of hearings in these proceedings.

3. That any responsive pleading be filed with the Court and served upon the Trustee by April 7, 1976.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: March 12th, 1976.

Order No. 795(A)

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

ORDER REGARDING PETITION OF THE TRUSTEE FOR ADJUDICATION OF THE COURT'S JURISDICTION IN LIGHT OF §618(b) OF RRRRA

The petition of the Trustee of the Debtor for an order relating to §618(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 (the RRRRA) having come on for hearing which was duly noticed; all parties in interest having been heard or given the opportunity to be heard; the Court having presided over these reorganization proceedings since July 1961, including the transfer of substantially all of the Debtor's assets (other than current assets) and all of its operating rights and franchises to Penn Central Transportation Company; the Court having heretofore adjudged that the Debtor is not subject to the Regional Rail Reorganization Act of 1973, 45 U.S.C. §701 et seq. (the Rail Act); the Court hereby taking judicial notice that Penn Central Transportation Company is a railroad in reorganization under §77 of the Bankruptcy Act and subject to the Rail Act; and the Court being otherwise duly advised in the premises; it is hereby ORDERED, ADJUDGED and DECREED:

That by operation of §618(b) of the RRRRA all powers and duties of the Interstate Commerce Commission under §77 of the Bankruptcy Act, with regard to these proceedings for reorganization of The New York, New Haven and Hartford Railroad Company, Debtor, terminated as of February 5, 1976, and all such powers and duties then became vested in this Court.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: April 14, 1976.

Order No. 795(B)

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

ORDER REGARDING PETITION OF THE TRUSTEE FOR AUTHORITY TO SEEK AMENDMENT OF MANDATES OF THE SUPREME COURT AND THE COURT OF APPEALS FOR THE SECOND CIRCUIT

The petition of the Trustee of the property of the Debtor for an order relating to §618(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 (the RRRRA) that would authorize the filing of motions or appropriate pleadings with the Supreme Court of the United States and the United States Court of Appeals for the Second Circuit having come on for hearing which was duly noticed; all parties in interest having been heard or given the opportunity to be heard; the Court having heretofore adjudged that, by operation of said §618(b) of the RRRRA, the former powers and duties of the Interstate Commerce Commission under §77 of the Bankruptcy Act with regard to the reorganization of this Debtor terminated as of February 5, 1976, and as of said date said powers and duties vested in this Court; and the Court being duly advised in the premises, it is

ORDERED:

That the Trustee be and he hereby is authorized to file an appropriate pleading or motion with the Supreme Court of the United States for amendment of its judgment in the *New Haven Inclusion Cases*, 399 U.S. 392 (1970), to bring it into conformity with §618(b) of the RRRRA and, thereafter to file, if he deems the same to be necessary or appropriate, an appropriate motion or pleading with the United States Court of Appeals for the Second Circuit for amendment of its judgment in *In re New York, N.H. & H.R.R.*, 457 F.2d 683 (2d Cir. 1972).

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: April 14, 1976.

Order No. 795(C)

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

ORDER REGARDING PETITION OF THE TRUSTEE FOR ESTABLISHMENT OF PROCEDURES REGARDING COMPENSATION MATTERS

The petition of the Trustee of the property of the Debtor for an order relating to §618(b) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 (the RRRRA) concerning the establishment of procedures in connection with proceedings under §77(c)(2) or §77(c)(12) of the Bankruptcy Act having come on for hearing which was duly noticed; all parties in interest having been heard or given the opportunity to be heard; the Court having heretofore adjudged that by operation of said §618(b) of the RRRRA, the former powers and duties of the Interstate Commerce Commission under §77 of the Bankruptcy Act with regard to the reorganization of this Debtor terminated as of February 5, 1976, and as of said date said powers and duties vested in this Court; and the Court being duly advised in the premises, it is ORDERED that:

1. All persons seeking compensation and/or reimbursement of expenses from the Debtor's estate under either §77(c)(2) or §77(c)(12) of the Bankruptcy Act shall file their verified petitions therefor directly with the Court, if they have not already done so, without first petitioning to have maximum limits fixed, and shall serve copies thereof on the Trustee of the property of the Debtor and all other persons customarily notified of hearings in these proceedings.

2. Petitions so filed shall contain such detail and be supported by such supplementary documentation as may reasonably be deemed appropriate in light of the nature of the petition.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: April 14, 1976.

RECEIVED
COUNSEL

Petition for Order No. 800

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

PETITION OF JACOB D. ZELDES, SUCCESSOR INDENTURE TRUSTEE UNDER DEBTOR'S GENERAL INCOME MORTGAGE DATED AS OF JULY 1, 1947, AND ZELDES, NEEDLE AND COOPER, P.C. AS HIS COUNSEL FOR ALLOWANCE FOR EXPENSES INCURRED FOR THE PERIOD FEBRUARY 11, 1972 THROUGH JUNE 15, 1975 INCLUSIVE IN CONNECTION WITH THESE PROCEEDINGS

Now come, Jacob D. Zeldes, Successor Indenture Trustee under the Debtor's General Income Mortgage dated as of July 1, 1947, and Zeldes, Needle and Cooper, P.C. as his counsel and respectfully petition this Court, pursuant to the provisions of Sections 77(a) and 77(c) (12) of the Bankruptcy Act, 11 U.S.C. §§205(a) and 205(c) (12), and Section 618(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the RRRRA), for an allowance for the actual and reasonable expenses incurred by him for the period February 11, 1972 through June 15, 1975 in connection with these proceedings, and in support thereof, respectfully represent:

36a

1. That on February 16, 1972, this Court by Order No. 666 appointed your petitioner, Jacob D. Zeldes, Successor Indenture Trustee under the Debtor's General Income Mortgage dated as of July 1, 1947.

2. That on May 31, 1972, this Court by Order No. 671 appointed Zeldes, Needle and Cooper as legal counsel to the aforesaid petitioner, Successor Trustee.

3. Under Section 77(c) (12) of the Bankruptcy Act, 11 U.S.C. §205(c) (12), it is unclear whether an indenture trustee or its counsel should be the moving party seeking payment for services. That the Petition should be deemed filed by Jacob D. Zeldes as indenture trustee for an interim allowance for actual and reasonable expenses is a procedure which seems more nearly consonant with the language of Section 77(c) (12). To protect its rights of appeal and avoid any problems of jurisdiction, Zeldes, Needle and Cooper, P.C. as counsel to petitioner hereby join as a joint petitioner in this petition.

4. That from February 11, 1972 through June 15, 1975, Zeldes, Needle & Cooper, P.C. rendered professional services to your petitioner with respect to such matters as were directed by your petitioner, and that they have continued to do so.

5. As Successor Trustee, and as a matter of law, your petitioner owes a fiduciary duty to each of the holders of the Debtor's General Income Mortgage Bonds and is obligated to represent those holders with the same degree of care and skill which a prudent man would use under the circumstances in the conduct of his own affairs.

6. That during the period February 11, 1972 through June 15, 1975, Messrs. Zeldes, Needle and Cooper, P.C. rendered professional services to your petitioner in connection with these proceedings, as more specifically described in the Petition of Zeldes, Needle and Cooper, P.C., Counsel to Jacob D. Zeldes, Successor Indenture Trustee Under Debtor's General Income Mortgage Dated as of July 1, 1947, for Allowance of Interim Compensation for the Period February 11, 1972 through June 15, 1975, which

petition was filed in these proceedings on June 16, 1975, was served on all parties to these proceedings and has been and remains available for inspection at the office of the Clerk of this Court and the offices of Zeldes, Needle & Cooper, P.C., counsel to petitioner.

7. There is a typographical error in the heading of the Petition which should be corrected to read as follows:

> "PETITION OF ZELDES, NEEDLE AND COOPER, P.C. COUNSEL TO JACOB D. ZELDES, SUCCESSOR INDENTURE TRUSTEE UNDER DEBTOR'S GENERAL INCOME MORTGAGE DATED AS OF JULY 1, 1947, FOR ALLOWANCE OF INTERIM COMPENSATION FOR THE PERIOD FEBRUARY 11, 1972 THROUGH JUNE 15, 1975"

8. By virtue of Section 618(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the RRRRA) the Interstate Commerce Commission lost all jurisdiction over the aforesaid petition on February 5, 1976 and jurisdiction then vested in this Court which now has jurisdiction to grant the present petition.

9. This Court can and should take judicial notice of the documentation of the services rendered by Zeldes, Needle and Cooper, P.C. during the period covered by the petition, as set forth in detail in Appendices A, B, C and D annexed to the aforesaid petition of Zeldes, Needle and Cooper, P.C. and may be classified as falling into three general categories:

A. Advice on various administrative matters involving Jacob D. Zeldes in his capacity as Successor Trustee;

B. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company; and

C. Matters relating to the protection of the New Haven Estate's position in the reorganization of the Penn Central Transportation Company under Section 77 of the Bankruptcy Act, in the United States District Court for the District of Connecticut, the United States District Court for the Eastern District of Pennsylvania and before the Interstate Commerce Commission.

10. That your petitioner had previously filed a petition for the allowance of interim compensation and reimbursement of expenses from the Estate of the Debtor for the period February 11, 1972 through December 31, 1973 (Petition for Order No. 718) and that by Order No. 718, this Court transmitted to the Interstate Commerce Commission that petition of your petitioner, Jacob D. Zeldes and Zeldes, Needle & Cooper, P.C. for compensation for legal services and reimbursement of expenses rendered during the period February 11, 1972 through December 31, 1973, which petition was received and docketed by the Interstate Commerce Commission.

11. To the best of petitioner's knowledge, information and belief the Interstate Commerce Commission has never acted upon any petition filed on behalf of your petitioner or his counsel, Zeldes, Needle & Cooper, P.C.

12. That reasonable compensation for the services rendered by Zeldes, Needle & Cooper, P.C., as counsel for your petitioner in this proceeding, can be determined at the conclusion of these proceedings, but that they promptly should receive interim compensation pending completion of these proceedings and the filing by them of a petition for allowance of final compensation.

13. That this Court held in a decision dated July 28, 1969, reported at 304 Federal Supplement 1121, that counsel for indenture Trustees might file for interim compensation, that such petitions would be entertained, and that such compensation, would be paid in cash and that your petitioner and his counsel submitted their petitions in reliance upon that decision.

14. That your petitioner should be reimbursed for the fees for legal services rendered by Zeldes, Needle & Cooper, P.C., and that the nature of the professional services performed, the benefits to the Debtor from such services and the time spent are such as to justify interim compensation for the period February 11, 1972 through June 15, 1975 in an amount not less than $33,971.00, plus reimbursement for disbursements of $1,165.91 as itemized

in Appendices A, B, C, and D annexed to the petition of Zeldes, Needle & Cooper, P.C. filed June 16, 1975.

15. Petitioners hereby withdraw their application for transmittal of the petition of Zeldes, Needle & Cooper, P.C. filed, June 16, 1975 to the Interstate Commerce Commission.

WHEREFORE, your petitioners pray that this Court enter orders herein:

1. Prescribing the manner of notice of hearing to be held on this petition and fixing a time and place for such hearing;

2. Directing the payment from the Debtor's estate of maximum interim compensation for the period from February 11, 1972 through June 15, 1975 to Zeldes, Needle & Cooper, P.C. in the amount of $33,971.00, plus reimbursement for disbursements of $1,165.91, said amounts to be payable in cash; and

3. Reserving jurisdiction to consider and pass upon the allowance of final compensation to Zeldes, Needle & Cooper, P.C. for professional services rendered and expenses incurred during the period from February 11, 1972 through June 15, 1975, at such time as shall be appropriate; and

4. Granting such other and further relief as the Court may deem equitable and proper.

Dated at Bridgeport, Connecticut this 23rd day of March, 1976.

JACOB D. ZELDES
Successor Trustee

ZELDES, NEEDLE & COOPER, P.C.

By: ELAINE S. AMENDOLA, *Attorney*

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss.: Bridgeport, March 23, 1976

Jacob D. Zeldes, Successor Indenture Trustee under The New York, New Haven and Hartford Railroad Company's General Income Mortgage, dated as of July 1, 1947 being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

JACOB D. ZELDES

Subscribed and sworn to before me this 23rd day of March, 1976.

LAWRENCE W. KANAGA III
Commissioner of the Superior Court

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } ss.: Bridgeport, March 23, 1976

Elaine S. Amendola, a member of the firm of Zeldes, Needle & Cooper, P.C., counsel to the Successor Indenture Trustee under The New York, New Haven and Hartford Railroad Company's General Income Mortgage being duly sworn, deposes and says that she has read the foregoing petition and knows the contents thereof and that the same is true to the best of her knowledge and belief.

ELAINE S. AMENDOLA

Subscribed and sworn to before me this 23rd day of March, 1976.

RENEE RUBEN
Notary Public

My Commission Expires March, 1977.

ORDER OF NOTICE

Upon reading the foregoing Petition, it is ORDERED:

1. That said Petition is hereby set down for hearing in this Court at 11:00 o'clock, A.M., or as soon thereafter as the Court can hear the same, on the 10th day of May, 1976 at New Haven, Connecticut.

2. That petitioners be and are hereby directed to give notice of said hearing by timely mailing copies of said Petition and this order to all parties who are customarily notified of hearings in these proceedings.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: April 14, 1976.

CERTIFICATE OF SERVICE

This is to certify that copies of the within petition and order were deposited in the U.S. Mails, first-class postage prepaid, to all parties who are customarily notified of hearings in these proceedings, on March 23, 1976.

ELAINE S. AMENDOLA
Attorney

KC

D-2421-71

RECEIVED
AUG 2 1976
OFFICE OF
COUNSEL

Petition for Order No. 808*

N THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

APPLICATION OF THE CHASE MANHATTAN BANK, N.A. (CHASE), AS TRUSTEE, AND DEWEY, BALLANTINE, BUSHBY, PALMER AND WOOD, (THE FIRM) FOR FINAL ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES AND DISBURSEMENTS

NOW COME the aforesaid Applicants who respectfully represent:

1. From the commencement of this Section 77 proceeding on July 7, 1961 to March 31, 1972 (when Chase was permitted

*The following Petitions for Orders No. 808, 809, 810 and 811 were initially transmitted to the Interstate Commerce Commission for the fixing of maximum compensation and expenses. See also Petitions for Orders No. 789 and 800. On February 5, 1976, the Railroad Revitalization and Regulatory Reform Act of 1976 was enacted (Public Law 94-210), and *inter alia* vested all of the former jurisdiction of the Commission in this Court as of February 5, 1976 to fix maximum compensation and expenses. Petitioners then proceeded in this Court. See Opinion of Judge Anderson, dated June 30, 1976, p. 10645, *infra*.

The amounts sought by the various Petitioners are set out in the foregoing Opinion.

by order of this Court to resign as General Income Mortgage Trustee because of a possible conflict of interest arising as a result of the institution of the Penn Central Section 77 proceeding), Chase rendered services and incurred expenses and disbursements as such Trustee, and the firm rendered services and incurred expenses and disbursements as counsel for such Trustee. The aforesaid services of Chase were in addition to its routine services as Registrar for the Income Bonds for which Chase has been paid pursuant to order of this Court.

2. Throughout said period, there was outstanding in the hands of the public $52,755,500 principal amount of General Mortgage Income Bonds, with $7,121,994 of interest being accrued and unpaid on said Bonds. The General Income Mortgage securing the Bonds was a second lien on the New Haven system and the accumulated interest was equally secured with the principal.

3. As Trustee under such Mortgage for the public holders of General Mortgage Income Bonds, Chase had a fiduciary duty and responsibility to act on behalf of these Bondholders in the reorganization proceedings in accordance with the provisions of the General Income Mortgage, excerpts or summaries of pertinent provisions of which are attached as Appendix A hereto. No committee has ever been formed to act for these Bondholders. They are numerous, scattered and consist of hundreds of individuals and other persons. As the sole active representative of the Bondholders, Chase necessarily had to be represented by counsel in the proceedings and take a full, continuous participatory role in the reorganization proceedings with care and prudence. From the outset, Chase and its counsel kept in mind the objective of performing services for the benefit of the estate or as a contribution to the Plan of Reorganization of the New Haven. From the outset also, Chase and its counsel kept in mind the need of avoiding unnecessary duplication with the New Haven Trustees and representatives of other New Haven bondholder interests. Thus, where positions of Chase and such other

interests were the same, counsel complemented their interest and did not duplicate work.

4. During the period of the proceedings from July 7, 1961 to March 31, 1972, officers of Chase performed services in the reorganization proceedings aggregating on a conservative basis, at least 1,480 hours, for which Chase applies for an allowance of compensation at the rate of $30 per hour in an amount aggregating $44,400.

5. During this period, Chase, as Trustee, incurred out-of-pocket expenses for disbursements from its own funds for which it applies in this Application in the amount of $84,648.83. These disbursements fall into the following principal categories:

(a) Payments to Wyer, Dick & Co., $41,590.93;

(b) Payments to official reporters for transcripts of Court and Commission hearings, $13,144.56;

(c) Printing of briefs filed on behalf of Chase in Court or with the Commission, $25,636.70; and

(d) Miscellaneous costs, $4,276.64.

6. The firm, as counsel for Chase, has performed services in the reorganization proceedings during the 10-¾ years from July 7, 1961 to March 31, 1972, as set forth in the affidavit of Joseph Schreiber submitted herewith. The total hours of the firm for its services in this period as shown in the affidavit aggregated 10,708.7, of which 2,078.4 were hours of Mr. Bushby, a senior partner of the firm who died on April 4, 1970, 7,039.3 hours were those of Mr. Schreiber, a senior associate with the firm for 38 years prior to July 1961, and 1,591.0 hours of other partners and associates of the firm. The affidavit of Mr. Schreiber and that of Stuart N. Scott submitted herewith request allowance for these services at prevailing rates of compensation in a total amount of $791,513.

7. During this period, the firm incurred expenses and disbursements relating to the aforesaid services rendered by the firm

amounting to $19,605.47 for which reimbursement is applied for in this allowance Application, as follows:

(a) $10,595.65 for charges for extraordinary stenography;

(b) $3,785.70 for multilithing;

(c) $2,923.85 for travel expenses;

(d) $301.40 for messenger services;

(e) $309.68 for long distance telephone tolls;

(f) $597.10 for postage;

(g) $401.86 for photostating, and

(h) $690.23 for miscellaneous.

In addition, the firm incurred expenses of $24,964 for regular stenography but reimbursement therefor is not applied for in this allowance Application.

8. As shown by the affidavit of Mr. Schreiber, the firm has spent during the period from April 3, 1969 to June 1, 1975, 580.1 hours in the drafting of the allowance Application of Chase and supporting affidavits for which reimbursement in the aggregate amount of $45,176 is applied for in this allowance Application.

9. In support of this Application of Chase and the firm, there are submitted herewith and incorporated herein by reference the aforesaid affidavits of Joseph Schreiber and Stuart N. Scott and the affidavit of Charles F. Ruge, sworn to June 13, 1975.

10. Order No. 606 of this Court permitting Chase to resign expressly provided (Printed Court Record p. 8946):

> "The Petitioners and their counsel shall have the right to apply herein at a later date for compensation for services and for reimbursement of expenses, all as provided in the General Income Mortgage and in Section 77 of the Bankruptcy Act."

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11. The filing of applications for allowances was suggested by this Court in its July 28, 1969 decision as follows (Printed Court Record, pp. 7746-7):

> "The aggregation of counsel fees in these and other situations comprises a substantial sum, but it is a small fraction of the benefits that the estate has received in return.
>
> This reorganization has presented a myriad of complex legal problems. The resolution of many have ploughed new ground. In the process of working these out through the adversary system, it has been of immense importance to have counsel of outstanding skill and competence to analyze and present the points at issue. Able counsel for the Commission, the Penn Central, the States and certain claimants against the Debtor's estate are, of course, not compensated out of the estate. Counsel for the trustees for the bond issues and for the First Mortgage 4% Bondholders Committee are, however, subject to the provisions of (c)(12). They have devoted an enormous amount of time and energy to the case, and the high order of their professional competence has made a very significant contribution to the reorganization proceedings. Present counsel for the Trustees for the First Mortgage Bonds and counsel for the Trustee for the Income Bonds have participated since the filing of the petition on July 7, 1961. There have been two sets of counsel for the Bondholders Committee, one succeeding the other, and separate counsel has appeared for Oscar Gruss & Son. The Indenture Trustees, their counsel and others who are entitled at this time to reimbursement of expenses and to compensation may, if counsel deem it advisable, apply for interim allowances, and the court will entertain such petitions."

12. There has been no prior Application for an allowance to the firm or to Chase out of the Debtor's estate.

13. Except for the general provisions of the firm's partnership agreement, neither said firm nor any of its partners has entered into any agreement or understanding, written or oral,

express or implied, with the Debtor, the Debtor's Trustee or Trustees, or any other person or any attorney for any such person, for the purpose of fixing the amount of any of the fees or other compensation to be allowed out of or paid from the assets of the Debtor or for division of any such fees or compensation.

14. The action hereby requested of the Interstate Commerce Commission will not affect the quality of the human environment.

15. Beginning in 1965 and continuing at six-month intervals thereafter, Chase has made "On Account" partial disbursement payments aggregating $365,755 to the firm in respect of the aforesaid services of the firm for which this allowance Application seeks $791,513. Such payments were at the rate of $30 per hour for services performed during the period from July 7, 1961 to May 31, 1968 and at the rate of $40 per hour thereafter. Chase recognized in the fourth year of the proceeding that counsel could not be expected to increase its capital requirements or borrow from outside sources to bear indefinitely the burden of rents, salaries and other overhead expenditures of the firm occasioned by the proceeding. Accordingly, these On Account partial disbursement payments have been made to enable the firm to partially finance its expenditures.

Such On Account payments did not represent and were not intended to be any attempt by Chase to appraise or determine the value of the services of the firm for the purposes of the proceeding or otherwise. Such amounts were obviously far below the charges which would have been made by the firm for services rendered to its clients, particularly since most of the services were performed by one of its Senior Partners and a senior associate of 38 years practice prior to 1961 and both of whom had had extensive experience in a number of complicated reorganization proceedings (including Section 77 proceedings). Because of such On Account payments, the firm will refund to Chase such payments out of the total amount allowed the firm for its services in the proceeding.

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Chase and the firm request the Court for an advance on account of the compensation for services and reimbursement of expenses and disbursements covered by this Application. Such services and disbursements were performed and made over a period beginning in July 1961 and Chase has had no advance payment with respect thereto for almost 14 years. There is no indication when the New Haven reorganization proceedings will be consummated but there is every indication it will be many years in the future. Particularly since Chase and the firm are no longer participating in the proceedings, it is appropriate to authorize advance On Account payments rather than to keep Chase and the firm waiting indefinitely for compensation for services performed and disbursements made. As provided by statute, such payments would be subject to reimbursement in the theoretical but unlikely event that such payments were not within the maximum limits therefore ultimately fixed by the Interstate Commerce Commission.

WHEREFORE, your Applicants respectfully request:

A. That this Court, pursuant to pargaraph (12) of subsection (c) of Section 77 of the Bankruptcy Act, enter an order for an advance On Account payment out of the Debtor's Estate at this time of compensation for services rendered and reimbursement of expenses and disbursements incurred by Applicants, and for a final allowance at a later time of compensation for such services and such reimbursements within such maximum limits as may be fixed by the Interstate Commerce Commission;

B. That this Court enter an Order directing the Clerk of this Court to transmit to the Interstate Commerce Commission, Washington, D.C. 20423, certified copies of this Application and of the supporting affidavits of Stuart N. Scott, Charles F. Ruge and Joseph Schreiber, and of said Order of this Court to the end that said Interstate Commerce Commission, upon receipt of said copies, may fix the maximum limits of the allowances to be made upon said Application and may, at its convenience, file with this Court its report thereon; and

C. That this Court in its Order reserve jurisdiction in this Court to consider and pass upon this Application for final allowance of compensation for services and reimbursement of expenses upon receipt by this Court of the report of said Interstate Commerce Commission fixing said maximum limits on allowances.

Dated: June 13, 1975.

THE CHASE MANHATTAN BANK, N.A.,
as former Corporate Trustee of the General Income Mortgage of the Debtor

By C. F. RUGE,
Vice President

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD
Attorneys for The Chase Manhattan Bank as former Corporate Trustee of the General Income Mortgage of the Debtor,

By STUART N. SCOTT
a Partner

By JOSEPH SCHREIBER

Attorneys for Applicants
140 Broadway
New York, New York 10005

(Applications, affidavits and supplemental papers omitted in printing)

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STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

C. F. Ruge, being duly sworn, deposes and says that he is a Vice President of Applicant, The Chase Manhattan Bank, N.A., and that he has read the foregoing Application and knows the contents thereof and that the same is true and correct to the best of his knowledge, information and belief.

C. F. RUGE,
Vice President

Sworn to before me this 13th day of June, 1975.

JOHN W. STEINHOFF
Notary Public

My Commission expires March 30, 1977.

[NOTARIAL SEAL]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

Stuart N. Scott, being duly sworn, deposes and says that he is a member of the firm of Dewey, Ballantine, Bushby, Palmer & Wood, and Applicant herein, that he has read the foregoing Application and knows the contents thereof and that the same is true and correct to the best of his knowledge, information and belief.

STUART N. SCOTT,
a Partner

Sworn to before me this 13th day of June, 1975.

ANNA K. WEISZ
Notary Public

My Commission expires March 30, 1977.

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GENERAL COUNSEL

Petition for Order No. 809

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,
Debtor

No. 30226

PETITION OF MANUFACTURERS HANOVER TRUST COMPANY, AS CORPORATE TRUSTEE, AND A. FREDERICK KEUTHEN, AS SUCCESSOR INDIVIDUAL TRUSTEE FOR AN ALLOWANCE FOR EXPENSES INCURRED FROM JULY 7, 1961 TO AUGUST 30, 1971 AND FOR COMPENSATION FOR SERVICES RENDERED FROM JULY 7, 1961 TO AUGUST 30, 1971 IN CONNECTION WITH THESE PROCEEDINGS

Manufacturers Hanover Trust Company, as Corporate Trustee, and A Frederick Keuthen, as Successor Individual Trustee, under the Mortgage of the Debtor as hereinafter set forth, respectfully petition this Court, pursuant to the provisions of section 77(c)(12) of the Bankruptcy Act (11 U.S.C. §205[c][12]), for an

allowance for the expenses they incurred from July 7, 1961 to August 30, 1971 and for compensation for the services they rendered from July 7, 1961 to August 30, 1971 in connection with these proceedings, and in support thereof state:

1. Petitioner, Manufacturers Hanover Trust Company ("Manufacturers Hanover"), is a banking corporation duly organized and existing under the laws of the State of New York and maintains its principal corporate trust office at 40 Wall Street, New York, N. Y. 10015. Petitioner, A. Frederick Keuthen, is an individual and maintains his principal residence at 15 Laurel Way, Madison, N.J. 07940. At the time he performed services and incurred expenses as Trustee, he was employed by Manufacturers Hanover or by Manufacturers Trust Company, the latter Company and the Hanover Bank having merged on September 8, 1961 with Manufacturers Trust Company being the surviving corporation under the name Manufacturers Hanover Trust Company. Mr. Keuthen seeks no compensation for such services and expenses for himself, but solely as they are included in the services and expenses of Manufacturers Hanover as to which compensation and reimbursement is sought hereby.

2. Petitioners were, respectively, Corporate and Successor Individual Trustee under the First and Refunding Mortgage of the Debtor, dated July 1, 1947 (the "Mortgage") which at the date of the filing of the petition for reorganization herein secured approximately $100,000,000 principal amount of the Debtor's First and Refunding Mortgage Bonds, 4% Series A, due July 1, 2007 (the "Bonds").

3. The Mortgage provides in substance that the obligor shall pay the Trustees reasonable compensation for the services they render, and for their reasonable expenses and counsel fees and other disbursements and those of their attorneys, agents and employees in fulfilling their duties and obligations thereunder. Annexed hereto as Exhibit A and made a part hereof is the text of

Article Eleven, Section 1, clause (10), which sets forth the compensation provisions contained in the Mortgage.

4. As Corporate Trustee and Successor Individual Trustee under the Mortgage, Petitioners owed a fiduciary duty to each of the holders of the Bonds issued under and secured by the Mortgage and, where a default under the Mortgage had occurred and was continuing, were obligated to represent those holders with the same degree of care and skill which a prudent man would use under the circumstances in the conduct of his own affairs.

5. Notwithstanding the commencement of these proceedings on July 7, 1961, Petitioners continued to render the normal, routine services ("Normal Services") they had rendered as Trustees under the Mortgage since its execution. In addition, since the commencement of these proceedings, and the resulting default of the Debtor under the Mortgage, Petitioners, in the performance of their duties and obligations under the Mortgage, rendered, as a result of such defaults, extensive extraordinary services ("Extraordinary Services") on an almost daily basis on behalf of the holders of the Bonds until this Court approved the Petitioners' resignation as Corporate Trustee and Successor Individual Trustee, respectively, under the Mortgage on July 29, 1971. Mr. Iannotti's appointment as Successor Trustee became effective August 30, 1971. These Extraordinary Services continued until February 22, 1972 when this Court signed an order approving Petitioners' account as Trustees under the Mortgage. Following the settlement of their account, Petitioners turned over to Mr. Iannotti, the Successor Trustee, all necessary papers and cooperated with him in the beginning of his new duties. Since that time various incidental matters have arisen where it was necessary for Manufacturers Hanover to be involved but relatively little time has been required.

6. The Extraordinary Services rendered by Petitioners during the period July 7, 1961 to August 30, 1971 are more fully de-

scribed and identified in the affidavits submitted in support of this Petition, being, particularly, the affidavit of Frank W. Kaestner, a Senior Vice President of Manufacturers Hanover, which affidavit is annexed hereto as Exhibit B and made a part hereof, and the affidavit of Horace J. McAfee, a Senior Partner of Messrs. Simpson Thacher & Bartlett, in support of his firm's application for compensation, which affidavit is annexed hereto as Exhibit C and made a part hereof.

7. To assist them in connection with their duties and obligations under the Mortgage, Petitioners retained their counsel, Messrs. Simpson Thacher & Bartlett, One Battery Park Plaza, New York, N. Y. 1004, to advise them and to represent them in these proceedings. The expenses Petitioners incurred for the period July 7, 1961 to August 30, 1971, as a result of their retention of Messrs. Simpson Thacher & Bartlett, are as set forth in said Exhibit C, annexed hereto.

8. Petitioners believe that they discharged the responsibilities they bore in connection with their duties and obligations under the Mortgage with skill and efficiency, that their Extraordinary Services on behalf of the holders of the Bonds were beneficial not only to the Bondholders but also aided in the proper administration of the Debtor's estate, and that reasonable compensation to Petitioners commensurate with the value of Petitioners' Extraordinary Services for the period July 7, 1961 to August 30, 1971 would be $304,416.67 plus the amount of their disbursements as hereinafter stated. In this connection it is to be noted that for their Normal Services during the period July 7, 1961 to the date they ceased to act as Trustee under the Mortgage, Petitioners have been paid the sum of $43,937.24 by the Trustees of the Debtor.

9. The scope and complexity of these reorganization proceedings are unprecedented and many more years may elapse before they are concluded. Similarly, the extent of the Extraordinary

Services required of Petitioners in connection with these proceedings and the expenses incurred by them relating to those Services over a period in excess of ten years were unprecedented.

10. Since Petitioners were permitted to resign as Corporate Trustee and Successor Individual Trustee, respectively, under the Mortgage and their final account was approved by order of this Court dated February 22, 1972, it is appropriate at this time that Petitioners be compensated for the services they have rendered herein and for expenses they have incurred, including their compensation for Extraordinary Services, as well as the services and disbursements of Messrs. Simpson Thacher & Bartlett as set forth in Exhibit C annexed hereto. It is to be noted that the services herein began at the time of the default by the Debtor in the payment of interest due on the Bonds July 1, 1961 and that the Debtor has not been called upon to pay (and has not paid) any amount whatsoever for the Extraordinary Services rendered by Petitioners and their counsel or for any repayment of their substantial disbursements.

11. In connection with this Application, it is pertinent to point out that in its decision dated July 28, 1969, reported at 304 F. Supp. 1121, this Court stated that:

> "The Indenture Trustees, their counsel and others who are entitled at this time to reimbursement of expenses and to be compensated, may, if counsel deem advisable, apply for interim allowances, and the Court will entertain such petitions."

12. The Petitioners submit that they are entitled to compensation and reimbursement of expenses as follows:

(1) Compensation for Extraordinary Services rendered from July 7, 1961 to August 30, 1971:	$304,416.67
(2) Miscellaneous and other expenses of Manufacturers Hanover Trust Com-	

pany as set forth in Affidavit of Frank W. Kaestner annexed hereto as Exhibit B (i.e. $194,416.60) exclusive of advance of $91,398.26 made to Messrs. Simpson Thacher & Bartlett for partial payment on account of services rendered and disbursements incurred (compensation of $90,000 and disbursements of $1,398.26) as described in affidavit annexed hereto as Exhibit C	103,018.34
Total	$407,435.01

exclusive of interest as shown in paragraph 13 of said affidavit of Frank W. Kaestner and also exclusive of the amount requested by Messrs. Simpson Thacher & Bartlett as compensation for services and reimbursement of expenses as set forth in said Exhibit C, i.e. $1,700,000.00 for services rendered, and $15,234.81 for disbursements, or a total of $1,715,234.81. It is proposed by Petitioners and Messrs. Simpson Thacher & Bartlett that the allowances of compensation and disbursement of Messrs. Simpson Thacher & Bartlett be made without regard to the advance of $91,398.26 made to them by Petitioners herein and that Petitioners shall look to Messrs. Simpson Thacher & Bartlett for the repayment of said advance out of the allowance for compensation and disbursements made herein to said firm.

13. In connection with the application of Messrs Simpson Thacher & Bartlett, it is pertinent to state that when the New Haven filed its petition for reorganization, Petitioners and Messrs. Simpson Thacher & Bartlett agreed, in view of the provisions of Section 77 of the Bankruptcy Act, that Messrs. Simpson Thacher & Bartlett would be legally entitled to receive as compensation for their services to Petitioners (and reimbursement for their expenses and disbursements) only such amount as was ultimately found by the courts to be reasonably and properly re-

imbursable to Petitioners out of the assets of the New Haven. However, Messrs. Simpson Thacher & Bartlett stated that in the event such amount was in their opinion grossly inadequate, Messrs. Simpson Thacher & Bartlett would come to Manufacturers Hanover and ask that they be paid additional compensation out of Manufacturers Hanover's own funds. Manufacturers Hanover agreed to consider any such request but it was expressly understood that it would under no legal obligation to comply.

14. This Petition including Exhibits A, B and C hereto and the annexes and appendices to said exhibits set forth the facts upon which Petitioners rely for their compensation and reimbursement. Petitioners reserve the right to submit legal memoranda and other supporting evidence, if necessary, to support their claim that they are legally entitled to compensation at the present time as indicated in paragraph 12 hereof. This paragraph is intended to satisfy the requirement of Rule 49(a) of the Rules of Practice of the Interstate Commerce Commission, 49 C.F.R. §1100.49(a).

15. As required by Rule 51 of the Rules of Practice of the Interstate Commerce Commission (49 C.F.R. §1100.51, (a) this Petition, (b) Exhibits A, B and C hereto, together with all annexes and appendices attached, (c) Petitioners' relevant time and expense records, and (d) the relevant time and expense records of Messrs. Simpson Thacher & Bartlett, are stated to be the evidence on which Petitioners rely in this proceeding.

16. As required by Rule 250(d) (1) of the Rules of Practice of the Interstate Commerce Commission (49 C.F.R. §1100.250(d) (1)) Petitioners state that this application should not have any effect, either adverse or beneficial, on the quality of the human environment.

17. Petitioners have not entered into any agreement, expressed or implied, with any other party in interest in the proceedings, including the Debtor, any creditor, the Trustees of the Debtor, or any representative of any of them, or with any

attorney for any such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, and no agreement or understanding exists between Petitioners and any other person for a division of any such compensation.

18. In view of the long period of time during which the services were rendered and the probability that substantial further time will elapse before the Interstate Commerce Commission renders its report on this application, it would be appropriate that Petitioners and their counsel be granted an advance payment on account of their application for compensation and reimbursement of disbursements, in such amount as may be found to be just and proper.

WHEREFORE, Petitioners respectively pray that this Court:

(1) Enter an order for transmittal by the Clerk of this Court to the Interstate Commerce Commission of copies of the Petition of Manufacturers Hanover Trust Company as Corporate Trustee, and A. Frederick Keutnen, as Successor Individual Trustee, for allowance for expenses incurred and for compensation for services rendered, including the affidavit of Frank W. Kaestner and the annexes thereto, which is attached to this Petition, as well as the application of Messrs. Simpson Thacher & Bartlett for allowances of compensation and reimbursement of disbursements (being the affidavit of Horace J. McAfee attached to said petition), including all appendices to said application, and of such order, to the end that the Interstate Commerce Commission, upon receipt of such copies, may fix the maximum limits for the allowance to be made for compensation of said Petitioners and for reimbursement of expenses, including an allowance to Messrs. Simpson Thacher & Bartlett for compensation for services rendered and for reimbursement of expenses, all as set forth in this Petition;

(2) At the time of entering the aforesaid order, to grant such advances, in the nature of interim payments on account of the payments to be directed under paragraph "(3)" hereof, as may be shown to be just and proper; and

(3) Reserve jurisdiction to consider and pass upon the allowance of compensation to Petitioners for services rendered and for reimbursement of expenses incurred, including the allowance of compensation to their counsel, Messrs. Simpson Thacher & Bartlett, and the reimbursement of expenses of said counsel, upon receipt by this Court of the report of the Interstate Commerce Commission fixing said maximum limits of allowance for compensation and reimbursement of expenses.

Dated: June 12, 1975, New York, New York

MANUFACTURERS HANOVER TRUST COMPANY,
in its own right and as former Corporate Trustee of The First and Refunding Mortgage of the Debtor.

By: FRANK W. KAESTNER
Senior Vice President

A. FREDERICK KEUTHEN, as former Individual Trustee under The First and Refunding Mortgage of the Debtor.

(Application, affidavits & appendices omitted in printing.)

VERIFICATION

STATE OF NEW YORK
COUNTY OF NEW YORK

FRANK W. KAESTNER, being duly sworn, deposes and says: I am a Senior Vice President of Manufacturers Hanover Trust Company, one of the Petitioners herein, and am in charge of its

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Corporate Trust Department; I have read the foregoing Petition and know the contents thereof and the same is true to my own knowledge except as to the matters therein stated to be upon information and belief, and as to those matters I believe it to be true.

FRANK W. KAESTNER

Subscribed and sworn to before me this 12th day of June, 1975.

TINA A. KLAPATOSK
Notary Public

(NOTARIAL SEAL)

My Commission expires March 30, 1977.

VERIFICATION

STATE OF NEW YORK
COUNTY OF NEW YORK

A. FREDERICK KEUTHEN, being duly sworn, deposes and says: I was formerly the Successor Individual Trustee referred to and am one of the Petitioners herein; I have read the foregoing Petition and know the contents thereof and the same is true to my own knowledge except as to the matters therein stated to be upon information and belief, and as to those matters I believe it to be true.

A. FREDERICK KEUTHEN

Subscribed and sworn to before me this 12th day of June, 1975.

TINA A. KLAPATOSK
Notary Public

(NOTARIAL SEAL)

My Commission expires March 30, 1977.

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Petition for Order No. 810

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

PETITION OF NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY FIRST MORTAGE 4% BONDHOLDERS COMMITTEE FOR AN ALLOWANCE FOR EXPENSES INCURRED FROM JULY 8, 1961 TO DECEMBER 31, 1973 IN CONNECTION WITH THESE PROCEEDINGS

New York, New Haven and Hartford Railroad Company First Mortgage 4% Bondholders Committee (hereinafter referred to as Bondholders Committee or Committee), which has been granted intervention herein pursuant to order of this Court dated February 28, 1962, respectfully petitions this Court, pursuant to the provisions of Section 77(c) (12) of the Bankruptcy Act, for an allowance for expenses, including reasonable counsel fees, incurred for the period from July 8, 1961 to December 31,

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1973 in connection with these proceedings and in furtherance of the administration and ultimate reorganization of the debtor's estate, and for an order directing the debtor to pay a reasonable sum to counsel for the Bondholders Committee pending the setting of maximum limits by the Interstate Commerce Commission (hereinafter "Commission") respectfully alleges:

1. The Bondholders Committee was organized by David W. Kahn, Harry Rebell and Lester W. Rubin to represent the owners of the debtor's First Mortgage 4% Bonds issued under the debtor's First and Refunding Mortgage dated as of July 1, 1947. As of the date of the filing of the petition for reorganization, the face amount of the First Mortgage Bonds of the debtor was $76,819,900. At December 31, 1968 (an important date with relation to the debtor's initial Reorganization Plan), $24,840,000 was due for unpaid interest, making the total claim of the First Mortgage Bonds as of December 31, 1968, $101,659,900. The Committee is organized and constituted in compliance with the provisions of Section 77(p) of the Bankruptcy Act.

Organization of the Bondholders Committee was commenced immediately after the filing by the debtor of its petition for reorganization on July 7, 1961. As a result of earlier reorganization proceedings, the debtor had a simplified debt structure. The First Mortgage Bonds were system-wide, and there were no divisional or partial bond issues other than a $9,000,000 bond issue on the Harlem River segment of the debtor's main line. The only other mortgage indenture was a General Income Second Mortgage in the face amount of $52,756,000, whose claims were secondary in all respects to those of the First Mortgage bondholders. The Indenture Trustees for the First Mortgage Bonds were Manufacturers Hanover Trust Company and A. Frederick Keuthen.

Throughout these proceedings the Bondholders Committee has been the only committee of creditors or security holders repre-

sented in these proceedings. The Committee members each brought their special skills to the job of organizing the Committee, notifying bondholders of the status of these proceedings and consulting and advising with counsel. Mr. Kahn was a financial and banking expert, Mr. Rebell is a certified public accountant, and Mr. Rubin is a practicing member of the Bar and a certified public accountant. Mr. Kahn resigned from the Committee in the summer of 1966. To assist it in its participation in these proceedings, the Bondholders Committee retained counsel to advise it and to represent it in connection with these proceedings. Initially, the Bondholders Committee retained the firm of Breed, Abbott & Morgan of New York City and also retained the firm of Lander, Greenfield & Krick of New Haven, Connecticut, to act as local New Haven counsel. In September 1966, the law firm of Migdal, Tenney, Glass & Pollack (then named Migdal, Low, Tenney & Glass) of New York City, was substituted in place of the firm of Breed, Abbott & Morgan. In connection with the reorganization proceedings filed by Penn Central Transportation Company (hereinafter Penn Central Reorganization Proceedings), the Philadelphia, Pennsylvania, law firm of Cohen, Shapiro, Polisher, Shiekman & Cohen acted as local Philadelphia counsel in aid of the services of Migdal, Tenney, Glass & Pollack.

2. The Bondholders Committee believes that its participation in these proceedings has been conducted with skill and efficiency and without unnecessary duplication of the activities of others, has resulted in effective representation of the First Mortgage Bondholders, has resulted in substantial financial benefit to the debtor, has contributed substantially to the orderly administration of these proceedings and has aided the Court and the debtor's Trustees in their efforts toward ultimate reorganization of the debtor.

3. The Bondholders Committee's principal expense was incurred in connection with its utilization of the services of legal

counsel, especially Messrs. Breed, Abbott & Morgan and Messrs. Migdal, Tenney, Glass & Pollack. To this date the Committee has made no payment to them for their services and they have advanced necessary disbursements in connection with these proceedings and litigation. The statement and application for allowances of Messrs. Breed, Abbott & Morgan and Messrs. Migdal, Tenney, Glass & Pollack are submitted herewith pursuant to order of this Court dated May 19, 1975 and are annexed hereto. In addition to its expenses for legal counsel, the Bondholders Committee has incurred expenses for its own activities. Leave to apply for reimbursement of such expenses when application for final allowances are made is respectfully requested.

4. The Bondholders Committee respectfully submits that its counsel should not be required to await the conclusion of these proceedings before payment of their compensation and reimbursement of expenses incurred with respect to the period from July 8, 1961 to December 31, 1973. The Bondholders' Committee and its counsel must continue its activities on behalf of the First Mortgage Bondholders. The Committee and its counsel has incurred and will continue to incur expenses in connection with these continuing proceedings since January 1, 1974. By this petition, the Bondholders' Committee requests the allowance from the Debtor's estate of the fees of its attorneys and their disbursements incurred during the aforesaid period of 12½ years. Adjudications thus far made in these proceedings reflect substantial benefits to the estate; further benefits from the proceedings covered by this petition will in the future accrue to the debtor's estate. The requested allowances are interim in two respects therefore: (a) they are interim in that they are requested to be allowed and paid prior to the termination of these proceedings and before the work of the Committee is concluded; and (b) they are interim in that full and appropriate measure of compensation for the Committee's attorneys cannot be finally fixed until the reorganization of the debtor has been completed. Accordingly,

it is respectfully requested that all interim allowances granted to counsel for the Bondholders' Committee, and all fixing of maximum limits of interim allowances by the Commission should be without prejudice to any petition for final compensation at the conclusion of the proceedings, and the reconsideration by the Commission of the fixing of maximum limits by the Commission with respect to the fees of counsel for services rendered to the Committee between July 8, 1961 and December 31, 1973.

5. Since counsel for the Bondholders Committee have received no compensation or reimbursement for expenses from the debtor's estate over the twelve and one-half-year period covered by this petition, it is respectfully requested that the Court order the debtor's estate to pay a reasonable sum to counsel for the Bondholders Committee as an advance pending the setting of maximum limits of the allowances by the Commission.

WHEREFORE, the Bondholders Committee respectfully requests that orders be entered herein (1) directing that the Clerk of this Court transmit to the Interstate Commerce Commission, Washington, D.C., twenty certified copies of this petition so that the Interstate Commerce Commission may, pursuant to the provisions of Section 77(c) (12) of the Bankruptcy Act, fix the maximum limits of the interim allowances to be made for the actual and reasonable expenses requested in this petition and the exhibits and applications of counsel annexed thereto, and may file with this Court its report thereon; (2) directing the Trustee of the debtor to pay out of the debtor's estate a reasonable sum as an advance against eventual payment in full of the allowances requested pending action of the Interstate Commerce Commission in setting the maximum limits of the allowances; (3) setting this petition down for hearing before this Court upon the filing with this Court of the report of the Interstate Commerce Commission setting the maximum limits of the allowances requested; (4) authorizing and directing the debtor's Trustee to pay the Bondholders Committee and its counsel for compensation and the actual

and reasonable expenses incurred in connection with these proceedings from July 8, 1961 to December 31, 1973, as set forth in the application of Breed, Abbott & Morgan and Migdal, Tenney, Glass & Pollack submitted with this petition; and (5) granting such other relief as this Court may deem just and proper.

NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY FIRST MORTGAGE
4% BONDHOLDERS COMMITTEE
By: LESTER W. RUBIN

Dated: June 13, 1975

(Supplemental applications omitted in printing.)

STATE OF NEW YORK
COUNTY OF NEW YORK } ss:

LESTER W. RUBIN, being duly sworn, deposes and says: I am the Chairman of the NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE, the petitioner herein. I have read the foregoing petition and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

LESTER W. RUBIN

Sworn to before me this 13th day of June, 1975.

LAWRENCE W. POLLACK
Notary Public

My Commission expires March 30, 1976.

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GENERAL COUNSEL

Petition for Order No. 811

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

PETITION OF UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE OF THE DEBTOR'S HARLEM RIVER DIVISION MORTGAGE UNDER THE DEBTOR'S INDENTURE OF FIRST MORTGAGE DATED AS OF JANUARY 1, 1953, AS SUPPLEMENTED, FOR ALLOWANCES FOR COMPENSATION AND EXPENSES EARNED AND INCURRED FROM JULY 7, 1961 TO APRIL 1, 1975 IN CONNECTION WITH THESE PROCEEDINGS

United States Trust Company of New York, as Trustee of the Debtor's Harlem River Division Mortgage under the Debtor's Indenture of First Mortgage dated as of January 1, 1953, as supplemented, (the "Trust Company"), respectfully petitions this

Court, pursuant to the provisions of Section 77(c) (12) of the Bankruptcy Act*, for allowances to be paid out of the Debtor's estate for the actual and reasonable expenses incurred by it in connection with the proceedings and plan herein and for reasonable compensation in connection therewith for the period from July 7, 1961 to April 1, 1975, and in support thereof alleges:

1. The Trust Company intervened in these proceedings pursuant to this Court's Order dated September 6, 1961 (Document No. 71). The Trust Company has acted and is acting herein pursuant to the Harlem River Division Mortgage, which is defined herein as the Debtor's Indenture of First Mortgage dated as of January 1, 1953 (hereinafter called the "1953 Indenture"), as supplemented by the Debtor's First Supplemental Indenture dated as of October 31, 1960, and by the Penn Central Transportation Company (formerly Penn Central Company) Harlem River Division Supplemental Indenture dated as of December 31, 1968 (hereinafter called the "Supplemental Indenture").**

2. In 1952 and 1953 the Debtor duly authorized the issuance of $14,000,000 principal amount of its Harlem River Division First Mortgage Bonds, 4¼%, Series A, due January 1, 1973 (the "Bonds") with interest thereon at the rate of 4¼% per annum from January 1, 1953 payable semi-annually on the first days of July and January. In order to secure payment of the Bonds, the Debtor duly executed and delivered to the Trust Company the 1953 Indenture under which the Debtor conveyed a first mortgage and lien interest to the Trust Company on the railroad properties as provided and described therein. The Trust Company duly executed the 1953 Indenture and accepted the

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*11 U.S.C. §205(c) (12).

**Attached to this Petition as Attachment 1 and Attachment 2 are, respectively, the provisions of the 1953 Indenture and the Supplemental Indenture relating to the Trust Company's rights and duties in the event of default.

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trusts therein set forth and imposed. In 1960, the 1953 Indenture was supplemented by the First Supplemental Indenture dated as of October 31, 1960. As of December 31, 1968, the 1953 Indenture was further supplemented by the Supplemental Indenture pursuant to which Penn Central Transportation Company (formerly Penn Central Company) assumed the obligations of the Debtor with respect to the Bonds on the terms and conditions set forth in the Supplemental Indenture and pursuant to which the first lien under the Harlem River Division Mortgage on the subject railroad properties was acknowledged and confirmed and the obligations of Penn Central Transportation Company were thereby secured, all as set forth in the Supplemental Indenture.

3. On July 7, 1961 the Debtor filed in this Court a petition for reorganization under Section 77 of the Bankruptcy Act.* The Trust Company, on the advice of its general counsel, determined that by reason of the importance of the Harlem River Division Mortgage in the financial structure of the Debtor, it was imperative that the Trust Company assume an active and constructive role in these proceedings to further and assist the reorganization and to protect the interests of the holders of the Bonds (the "Bondholders"). The Trust Company also believed that by taking an active role, the experience of its officers and of its general counsel in railroad reorganization matters could effectively be brought to bear on these proceedings so as to rehabilitate the Debtor as expeditiously and fairly as possible.

4. The Trust Company employed its general counsel, Messrs. Carter, Ledyard & Milburn, 2 Wall Street, New York, New York, to advise it and represent it in connection with these proceedings. The fees and expenses herein of Carter, Ledyard & Milburn, together with a statement of services rendered are set forth in full in Exhibit A hereto, the affidavit of Walter A. Kernan, a member of that firm.

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*11 U.S.C. §205.

5. The Trust Company employed Messrs. Pierre Bretey and Carl Ziebarth of Hayden, Stone Incorporated as consultants.* The compensation and expenses attributable to the services of Messrs. Bretey and Ziebarth, together with a statement of services rendered, are set forth in Exhibit B hereto, the affidavit of Bruce E. Baker, an officer of HS Equities, Inc.

6. The Trust Company's statement of services rendered as indenture trustee and expenses (other than the expenses referred to in Exhibits A and B) are set forth in Exhibit C hereto, the affidavit of J. Sinclair Armstrong, an officer of the Trust Company.

7. On July 28, 1969 this Court commented upon applications by counsel for indenture trustees for allowances of compensation and expenses:

> "Counsel for the trustees for the bond issues . . . have devoted an enormous amount of time and energy to the case, and the high order of their professional competence has made a very significant contribution to the reorganization proceedings. . . . *As Penn Central has assumed the Harlem River bonds, to the advantage of their holders,* it would appear that the Indenture Trustee for these bonds and its counsel could proceed for *final* reimbursement of expenses and compensation." (Emphasis added.) Memorandum dated July 28, 1969, 304 F. Supp. 1121, 1127.

Accordingly, the Trust Company does not expect to make any further request for additional allowances with respect to compensation and expenses earned and incurred by it during the period from July 7, 1961 to April 1, 1975; in this sense this petition is for a final allowance. The Trust Company does reserve the right, however, to request additional fees and expenses

*HS Equities, Inc. is the successor in interest to Hayden, Stone Incorporated.

for services rendered by it in these proceedings subsequent to April 1, 1975; in this sense this petition is for an interim allowance.

8. The statements required by the Bankruptcy Act as to the allowances requested herein are contained in the affidavits annexed hereto (paragraphs 9 and 10 of Exhibit A, paragraph 5 of Exhibit B and paragraphs 6 and 7 of Exhibit C) and are hereby incorporated by reference as if fully set forth herein.

WHEREFORE, the Trust Company respectfully requests that this Court enter an order:

(i) directing the clerk of the Court to transmit forthwith to the Interstate Commerce Commission, Washington, D. C. 20 certified copies of this Petition so that the Interstate Commerce Commission may, pursuant to the provisions of Section 77(c)(12) of the Bankruptcy Act, fix the maximum limits of the allowances to be made for the compensation and expenses required in this Petition and may file with this Court its report thereon;

(ii) fixing a time for a hearing in this Court upon the filing with the Court of the Report of the Interstate Commerce Commission referred to above;

(iii) authorizing and directing the Debtor's Trustee to pay the following amounts to the following persons in connection with these proceedings:

A. *Messrs. Carter, Ledyard & Milburn*

Fees for services	$700,000.00
Disbursements	16,029.62
	$716,029.62*

*From July 7, 1961 to April 1, 1975 the Trust Company has advanced $172,152.40 to Messrs, Carter, Ledyard & Milburn on account of its fees in connection with these proceedings and $34,621.25 in connection with its

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B. *HS Equities, Inc.*		
Fees for services (including disbursements)	$ 12,500.00	
C. *United States Trust Company of New York*		
Reasonable compensation	$ 75,000.00	
Actual and reasonable expenses (other than as set forth above in A and B)	$ 275.36	
	$ 75,275.36	
Total compensation and expenses		$803,804.93

iv) fixing such advances in the nature of interim payments on account of the payments to be made under item (iii) as may be just and proper, while the matters in items (i), (ii) and (iii) are pending;

(v) reserving jurisdiction upon such matters as to this Court may seem necessary or appropriate, including further applications for allowances by the Trust Company in these proceedings in accordance with paragraph 7 herein; and

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fees in connection with the preparation of this Petition and the Exhibits thereto and has reimbursed it for disbursements in the amount of $16,029.62. In 1966, seven of the Bondholders advanced $51,204.54 to the Trust Company to help defray a portion of its legal expenses. This amount was included in the $172,152.40 advanced by the Trust Company to Messrs. Carter, Ledyard & Milburn. Carter, Ledyard & Milburn has agreed, subject to certain conditions, to reimburse the Trust Company out of its recovery from the Debtor's estate for advances received from the Trust Company. The Trust Company, in turn, has agreed, subject to certain conditions, to reimburse the seven Bondholders *pro rata* for their advances out of the amounts received from Carter, Ledyard & Milburn as reimbursement of the Trust Company's advances to that firm. *See* paragraph 10 of Exhibit A and paragraph 7 of Exhibit C.

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(vi) granting such other relief as this Court may deem just and proper.

UNITED STATES TRUST COMPANY
OF NEW YORK
By s/ J. SINCLAIR ARMSTRONG
Executive Vice President

Dated: June 12, 1975.

Of Counsel:
CARTER, LEDYARD & MILBURN
2 Wall Street
New York, New York 10005
(212) 732-3200

(Attachments and exhibits omitted in printing.)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

J. SINCLAIR ARMSTRONG, being duly sworn, deposes and says that he is Executive Vice President of the Petitioner United States Trust Company of New York, and that he has read the foregoing petition and knows the contents thereof and that the same is true and correct to the best of his knowledge, information and belief.

s/ J. SINCLAIR ARMSTRONG
J. SINCLAIR ARMSTRONG

Sworn to before me this 12th day of June, 1975.

[NOTARIAL SEAL]

s/ THOMAS G. O'BRIEN, III
Notary Public

My commission expires March 30, 1977.

KC

RECEIVED
AUG 1976
OFFICE OF
GENERAL COUNSEL

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

OPINION AND ORDER ON APPLICATIONS, PURSUANT TO §77(C) (12) OF THE BANKRUPTCY ACT, FOR COMPENSATION AND FOR REIMBURSEMENT OF EXPENSES INCURRED ON BEHALF OF THE BANKRUPT ESTATE

On August 20, 1975 this court filed an opinion and order pursuant to which there were forwarded to the Interstate Commerce Commission (I.C.C.) certain applications for compensation for services and expenses, rendered and expended by the several applicants for the benefit of the Debtor's estate sometime between July 7, 1961, the date of the filing of the petition for reorganization of The New York, New Haven and Hartford Railroad Company (New Haven Railroad), and a date or dates shortly prior to the filing of the applications.

On February 5, 1976, the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law #94-210) (RRRRA), which had been enacted by Congress, was signed by the President. Section 618(b) of the Act, among other things, provides that the powers and duties of the I.C.C. under §77 of the Bankruptcy Act be terminated on the enactment of the RRRRA into law, as it related to any railroad in reorganization under §77 but not subject to the Regional Rail Reorganization Act of 1973, 45 U.S.C. 701 *et seq.* (the "Rail Act") and one which does not operate any line of railroad and which has transferred all or substantially all of its rail properties to a railroad in reorganization which was

subject to the Rail Act prior to the enactment into law of the RRRRA.

The situation of the New Haven Railroad and the circumstances of its reorganization at that time brought it squarely wi[illegible] the provisions of §618(b) of the RRRRA; and, pursuant to the provisions of that section, all of the powers and duties formerly in the I.C.C. to pass upon the above mentioned claims, vested in this court, as the reorganization court having jurisdiction over the New Haven Railroad, the Debtor, herein.

Therefore all of the applicants filed their claims in this court and have asked that they be allowed and paid. Hearings were held on the petitions on May 10, and June 1, 1976, and the petitions for compensation for services and the allowance of costs have been fully submitted and are presently in the hands of the reorganization court for determination.

The claims made by the parties are as follows:

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee of the Debtor's Harlem River Division Mortgage		
Fees:	$ 75,000.00	
Expenses	12,775.36	
		$ 87,775.36
Carter, Ledyard & Milburn		
Fees:	$ 700,000.00	
Expenses	12,775.36	
		716,029.62
FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE		
No separate fee or expenses are requested at this time.		
Breed, Abbott & Morgan		
Fees:	$ 76,663.20	
Expenses	864.22	
		77,527.42

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Migdal, Tenney, Glass & Pollak		
Fees:	$ 1,350,000.00	
Expenses	47,766.88	
		1,397,766.88
Harry P. Lander, Esq.		
Fees:	$ 10,000.00	
Expenses	1,400.00	
		11,400.00
MANUFACTURERS HANOVER TRUST COMPANY as former indenture trustee for the First and Refunding 4% Mortgage Bonds		
Fees:	$ 304,416.67	
Expenses	103,018.34	
		407,435.01
Simpson, Thacher & Bartlett		
Fees:	$ 1,700,000.00	
Expenses	15,234.81	
		1,715,234.81
CHASE MANHATTAN BANK, N.A., as former indenture trustee under the General Income Mortgage Bonds		
Fees:	$ 44,400.00	
Expenses	84,648.83	
		129,048.83
Dewey, Ballantine, Bushby, Palmer & Wood		
Fees:	$ 791,513.00	
	45,176.00	
Expenses	19,605.47	
		856,294.47
LAWRENCE W. IANNOTTI, Successor Trustee under the Debtor's First and Refunding Mortgage		
Fees:	$ 45,660.00	
		45,660.00

Tyler, Cooper, Grant, Bowerman & Keefe			
Fees:	$	30,540.00	
Expenses		4,481.38	
			35,021.38
JACOB D. ZELDES, Successor Indenture Trustee under Debtor's General Income Mortgage			
Zeldes, Needle and Cooper, P.C.			
Fees:	$	33,971.00	
Expenses		1,165.91	
			$ 35,136.91

The petitioners, of course, must bear the burden of proving that the services for which compensation is sought under §77(c) (12), measurably benefited the estate and promoted the reorganization of the Debtor. *Woods* v. *City National Bank & Trust Company of Chicago*, 312 U.S. 262, 268 (1941) (Ch. X reorganization); *In Re New York, N.H. & H. R. Co.*, 46 F. Supp. 214 (D. Conn. 1942), *modified and aff'd sub nom. Warren* v. *Palmer*, 132 F.2d 665 (2 Cir. 1942); *In Re Boston & Providence Railroad Corp.*, 428 F.2d 159, 164 (1 Cir. 1970); *In Re Yale Express System, Inc.*, 366 F. Supp. 1376 (S.D.N.Y. 1973) (Ch. X reorganization); *Missouri Pacific R. R. Reorganization*, 212 I.C.C. 622, 665, *aff'd on reconsideration*, 217 I.C.C. 577 (1936). The services must have advanced the course of the reorganization and not impeded it, *In re Boston & Providence R.R.*, 260 F. Supp. 415, 422 (D. Mass. 1966), *cert. denied*, 389 U.S. 974 (1967). Furthermore, it is the usual rule that they must not be cumulative, overlapping or duplicative of those of other claimants or services rendered by the reorganization trustee and his counsel. *Finn* v. *Childs Co.*, 181 F.2d 431 (2 Cir. 1950) (Ch. X reorganization); *In Re New York, N.H. & H. R. Co., supra.*

A substantial portion of the expenses claimed by each of the petitioners is made up of its attorneys' fees and the attorneys' out-of-pocket expenses. The eligibility of the claims for attorneys' fees, rests upon the same general qualifications as do §77(c) (12) claims generally, that is, the contribution by the

attorney must provide a measurable benefit to the entire estate; it must be closely connected with the process of reorganization; and should be different from or more than a duplication of someone else's contribution.

From the date of the filing of the petition in reorganization, July 7, 1961, to the present time all issues of any substance which have arisen in the proceedings for the reorganization of the New Haven Railroad have been heard and decided by the same reorganization court, the United States District Court for the District of Connecticut. Beside the hearings in the district court there were two additional proceedings in which petitioners' counsel appeared: one was the appeal from the I.C.C.'s decision on the valuation of the property of the New Haven Railroad for the purpose of fixing the price to be paid by the Penn Central Railroad for that property which, pursuant to §5 of the Interstate Commerce Act, was heard by a statutory three-judge court; and the other was the hearing to determine the value of the Grand Central Properties which was assigned by the reorganization court to a special master. The reorganization court was kept fully informed as to the three-judge court proceedings and its holding in the case. At that time both courts were of the opinion that the statutes required decisions by both courts. The Supreme Court's decision in the *New Haven Inclusion Cases*, 399 U.S. 392 (1970), however, ruled that after the Penn Central merger the three-judge court proceedings were no longer necessary. The special master's findings were submitted to the reorganization court, which studied them in detail, and approved and adopted them. All of the proceedings and activities upon which the petitioners' claims are based, took place before the same court and the same judge who is now entertaining and passing upon these petitions—a circumstance which affords the court the opportunity to bring to bear upon the claims, firsthand observation and a direct line of sight on the relevant bases of evaluation.

One of the above mentioned generally adopted principles which apply to cases of this kind, is that the services for which compensation is sought are not cumulative, overlapping, or duplicative

of those of other claimants, particularly of the reorganization trustees or their counsel. On the other hand, this rule must not be applied so as to deny compensation altogether, to representatives of parties which the Bankruptcy Act contemplates should take an active part in reorganization proceedings, merely because on certain issues their various interests may converge. See *In Re TMT Trailer Ferry, Inc.* 434 F.2d 804, 807-08 (5 Cir. 1970); 6A Collier on Bankruptcy ¶13.10, at 967-69 (14th ed. 1972). Where different counsel contribute different or additional points of view on a given subject, even though all may be working toward a similar ultimate end, there is a benefit to the debtor's estate, at the very least, where the issues have been more fully defined or more thoroughly analyzed and presented. Such a benefit, when it occurs, may properly be recognized in the granting of allowances. Cf. *In Re New York, Ontario and Western Railway Co.*, 171 F. Supp. 634, 639-40 (S.D.N.Y. 1958). Where, on the other hand, one party does nothing more than repeat the position of another, the debtor should not be required to pay for the duplication of effort. See *In Re New York, N.H. & H. R. Co., supra*, 46 F. Supp. at 222, 224.

Compared with some railroad reorganizations and comparable Chapter X cases, the number of claimants in the present case is not unusually great, but there are overlapping interests as well as divergent interests. The indenture trustees and their counsel, as well as the 4% Bondholders Committee, as the record clearly shows, exerted every effort to preserve the Debtor's estate and to achieve through the necessary litigation a reasonably fair valuation of the assets of the estate. During the periods within which they held their respective positions, the indenture trustees and the committee and their counsel participated in all of the hearings by briefs and arguments as well as by presentation of evidence where necessary, on the many occasions in which these objectives—*i.e.*, the preservation of the Debtor's estate and the achievement of a fair valuation — were at issue. The reorganization trustees[1] sought to pursue these same objectives but they were compelled to give a great deal of weight and consideration to the factor of the public interest which was heavily involved in keeping the

transportation system of the New Haven Railroad in operation to avoid the devastating economic consequences to southern New England of a cessation of freight operations, in addition to the loss of jobs to well over 9,000 employees and the loss of transportation facilities to thousands of regular passengers. The reorganization proceedings started with an empty treasury. The federal government made a *loan* of $12,500,000 which temporarily permitted the New Haven Railroad to continue its operations, but it must be borne in mind that, unlike the Government's present activities in relief of the railroads, the federal government did not by way of grant or similar assistance give the New Haven Railroad a single dollar. On December 31, 1968, in an action dictated primarily by the public interest, the transportation plant of the New Haven Railroad was conveyed to the Penn Central as the sole means of keeping the trains going. Meanwhile, from July 7, 1961 to December 31, 1968 the New Haven Railroad, to operate, had to live on its own flesh and did so. The assets, insufficient to cover the obligations under the two series of bonds were eroded and depleted to the extent of 65 — 70 million dollars in value. See *New Haven Inclusion Cases, supra.* In the face of these problems the petitioners presented the arguments for preserving the Debtor's estate with clarity and skill, based upon pains-taking and extremely helpful analyses.

The record shows that there were innumerable issues, mostly new and complex, which arose out of the effort, on the one hand, to preserve the Debtor's estate and, on the other, to satisfy the demands of the public interest. The court was constantly required to balance these interests and make the necessary decisions. Without the adversary presentations, the balancing process would have been very difficult, if not impossible.

Obviously the estate should not be charged for duplicated services, and, to the extent that there is such duplication, compensation for an overall contribution must be discounted. Likewise, legal services directed to advancing the separate and distinct interests of the attorneys' client-petitioner, and not the estate as a whole, must be disregarded. In the present case the services

of petitioners' counsel were almost entirely directed at preserving and enhancing the value of the Debtor's estate. That this could result in an ultimately greater recovery by the petitioners themselves does not militate against a right to compensation. Any duplications of service among the petitioners or with the work of the reorganization trustees and their counsel were relatively small. It is apparent from the record that they made a conscious effort to avoid this. Though the positions and objectives of two or more of them and those of the reorganization trustees might parallel each other (in which case, by agreement, only one presentation would be made), the issues were usually so complex that different interpretations and approaches were available and were separately presented by the different petitioners. This afforded the court a thorough analysis of an issue from varying points of view, which was a great aid to the court and made a valuable contribution to the reorganization proceedings. Any repetition or duplication involved, which did not serve any useful purpose, was in no instance substantial. To the extent that it did appear in the contribution of any petitioner or its counsel, it has been taken into account in fixing compensation.

On August 20, 1975 this court drafted and filed an opinion and order, ruling upon applications by the petitioners to exercise its general equity powers and order payment of interim compensation at that time. While the court declined because, under the law as it then stood, it was the duty and function of the I.C.C. to pass upon such claims, the court did, to a limited extent, discuss the claims for compensation and expenses. A portion of what was said then is repeated here:

> "In this connection a principal claim of the petitioners for having rendered services of substantial benefit to the bankruptcy estate and in aid of the reorganization plan stems from their services in connection with the valuation of the property of the New Haven Railroad which was transferred to the Penn Central. The Trustees for the New Haven Railroad in reorganization had negotiated at length and in great detail with the Pennsylvania and New York Central Railroads in an effort to avoid lengthy and costly litigation.

A tentative agreement was ultimately reached, in the amount of approximately $125,000,000, which the reorganization court authorized the Trustees of the New Haven to submit to the Commission on October 24, 1966 and which was subsequently approved by the Commission; but it was never submitted to the reorganization court.

Thereafter in the proceedings, the Trustees for the New Haven felt that, having made the tentative agreement, there would be some impropriety in their going back to the Railroads, which merged on February 1, 1968 as the Penn Central, to attempt to get a higher price. The court considered their position to be understandable and proper. See *New Haven Inclusion Cases*, 399 U.S. 392, 410 notes 45 and 46 (1970). The petitioners, however, were not bound by the agreement and, using the $125,000,000 of the agreement as a point of departure, they pressed for a higher price. Ultimately it was fixed by the courts at approximately $174,600,000."

See *New Haven Inclusion Cases, supra.*

The I.C.C., after reviewing the agreement, fixed a value for the New Haven Railroad of $125,000,000. Afterward, certain errors were shown to have been made in this computation which had caused the value to be underestimated by about $24,600,000. These errors were: (1) a double deduction of $16,200,000 for real estate taxes; (2) a failure to discount to present worth the expenses of liquidation, a factor which made a difference of $3,800,000; and (3) an increase of $4,600,000 in the appraisal of Bronx Yards by including the accidentally omitted feature of rail connection.

With regard to the amount of compensation which should be allowed, this must, of course, vary from case to case, depending upon the size, difficulty and complexity of the case and its issues, the need for the particular services performed by the petitioner and the nature and importance of the benefit which accrued to the estate and the reorganization proceedings. In the present case

the contributions made by the attorneys in the context of a railroad reorganization which, barring a relatively small initial loan, had to continue operations without cash and without credit, took on particular importance. Recent decisions in this Circuit on the subject of calculating attorney's fees, as they may apply to the present case, have laid considerable emphasis on the hours spent by counsel in working on the case, his standing at the bar, as well as the standing of his opponents, the magnitude and complexity of the litigation, and the responsibility involved and the result achieved. *City of Detroit* v. *Grinnell Corp.*, 495 F.2d 448 (2 Cir. 1974); *Trans World Airlines, Inc.* v. *Hughes*, 312 F. Supp. 478 (S.D.N.Y. 1970), *modified on appeal*, 449 F.2d 51 (2 Cir. 1971), *reversed on other grounds sub nom. Hughes Tool Co.* v. *Trans World Airlines, Inc.*, 409 U.S. 363 (1973). Outside of being a point of beginning and a rough initial indicator, time spent can, in itself, have no conclusive meaning. The contribution to the Debtor's estate and its reorganization must be judged in the light of the quality and value of the work produced.[2]

Allowances for compensation and expenses have usually been made in connection with an approved and confirmed plan of reorganization. *In re United Cigar Stores Co. of America*, 21 F. Supp. 869, 875 (S.D.N.Y. 1937); *Savannah & A. Ry. Reorganization*, 228 I.C.C. 543 ,558 (1938). But where there was sound reason to believe that the reorganization proceedings would not be concluded for a long period of time, the Commission in a recent case took the position that it was unfair to qualified claimants to be required to bear the burden of indefinite delay before being paid. In *Penn Central Transportation Co. Reorganization (Compensation)*, 348 I.C.C. 50 (1975), it permitted interim allowances under §77(c) (12) in advance of any reorganization plan proceedings. In the present case the reorganization trustee formulated and filed a plan with the I.C.C., but, after the merger with the Penn Central and after that Railroad went into reorganization, the New Haven trustee's plan became dependent upon and subject to the reorganization plan of the Penn Central, which will not, in all probably, be filed and approved for a long time to

come. Therefore, in fairness to the petitioners, the court is of the opinion that their petitions for allowances under §77(c) (12) should be determined now.

Another factor which must be considered is the assertion by the petitioners that the expense for attorneys' fees, in the circumstances of this case, should be regarded as in the nature of contingent fees, which are usually somewhat higher than ordinary attorneys' fees because the attorney has agreed to look only to the gross amount recovered in the action and meanwhile to bear the costs and expenses of the litigation. If there is no recovery, he stands to lose whatever he has put into the case in services and money. The evidentiary material in the case does not show in express terms what fee arrangements were made by and between each of the petitioners and their counsel. Attorneys' fees are presented here as expenses of the petitioners, and there were implications by some that it was not contemplated that their attorneys would be left with a loss, but that the petitioners were first to seek reimbursement of attorneys' fees from the court under §77(c) (12). There does appear to have been a contingent fee aspect to the attorney-petitioner arrangement in the cases of the First Mortgage 4% Bondholders Committee, the Manufacturers Hanover Trust Company and the Chase Manhattan Bank, N.A., and in due course, consideration will be given to it. While the attorneys for the petitioners participated in the proceedings leading up to and including the procuring of a judgment of the Supreme Court of the United States, fixing the amount due by the Penn Central to the New Haven Railroad for the inclusion of the property of the New Haven at $174,600,000, that sum has not been paid and is due with interest. There is, therefore, no recovery in money against which a contingent fee can be measured. It will be necessary for this court to reserve jurisdiction on that matter.

There are a few other matters of general application which concern the compensation for services and expenses. It will be noted that the court has disallowed the very large sums, mostly hours of work by attorneys and clerical and secretarial assistance

in preparing the applications for fees and expenses for presentation to the I.C.C. in compliance with its detailed specifications under Rule 51 of the I.C.C.; 49 C.F.R. §1100.51. The court has no such elaborate requirements. It is sufficient if the applications reflect the time records, nature of work performed at those times, the rates of compensation, and moneys received and expended and the reasons for them; and it should appear that the records are accurate and are such as are kept by a prudent attorney in the regular course of his practice. It is not customary for an attorney to make a special charge for drafting a bill and presenting it to his client. The I.C.C. created a special set of requirements and, in view of it, allowed the charge in several cases; in others, inexplicably, it did not. There is no reason, however, why that item of cost should be borne by the Debtor's estate.

The court made an estimate of the portions of the claimed attorneys' fees, charged on the basis of current rates of pay rather than the rates which obtained for like work when the work was performed. In its computations the court made adjustments so that the latter standard would prevail. It is true that there was no allowance for interest, and there ordinarily would be some justification for seeking payment of past charges in terms of present dollar values.

In this case, however, the opposite rule must prevail. From time to time, as long ago as seven or eight years, the court formally and informally suggested that the petitioners prepare and file their claims for compensation and expenses but this was never done. Some discretion as to filing the claims was left with the lawyers, but no reason was ever given at the time to explain why they did not do so.

In each of the computations for services of indenture trustees and counsel, the first or basic estimate concerned "watchdog services." Allowances for such activities are proper. An indenture trustee serves in a fiduciary capacity, *Woods, supra;* see the Trust Indenture Act of 1939, 15 U.S.C. §§77aaa *et seq.*, and is under a duty to look out for the bondholders' interests in reorganization and to guard the value of the assets underlying those

interests. It also means that the trustee must "keep informed of [the reorganization] proceedings and participate therein," *In Re Hudson & Manhattan Railroad Company*, 224 F. Supp. 815, 829 (S.D.N.Y. 1963), *modified on other grounds*, 339 F.2d 114 (2 Cir. 1964), and to offer suggestions and otherwise intervene where necessary to perform its functions. Generally such services aid the administration of the estate and the reorganization of the debtor, and may be compensated out of the estate. See *In Re New York, Ontario and Western Railway Co., supra*, 171 F. Supp. at 637-38, 639-40.

With regard to the First Mortgage 4% Bondholders Committee and its counsel, the Migdal, Tenney firm, it should be noted that they are, in effect, only volunteers and are not acting in pursuance of a fiduciary duty as the indenture trustees are. The Committee is not entitled to receive compensation or reimbursement of expenses for "watchdog" services, as such. The Bondholders Committee was likewise so limited in regard to the expense of counsel fees during the period when Breed, Abbott & Morgan served as its attorney.

The Committee has now moved to file a claim for its expenses, July 8, 1961 — December 31, 1973. Not having previously made a timely filing, the motion is denied.

The court has considered the question of unnecessary duplication of proffered benefits to the New Haven estate by two or more petitioners and has discussed it, *supra*. Where the court has been of the opinion that some duplication has occurred in situations where a petitioner has duplicated the work of the reorganization trustee or his counsel or the work of another petitioner who is carrying the main burden on the issue, some deduction has been made from the claim of the duplicator.

The court made reference, above, to the enactment of the RRRRA of 1976, which became law on February 5, 1976. On April 14, 1976 in ruling on the effect of the new law, the court held in Order #795(A) (B) and (C) that all of the powers and duties formerly in the I.C.C. to pass upon claims made for

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services and expenses under §77(c) (12) against the estate of the New Haven Railroad in reorganization vested in this court, and this is so regardless of whether the services were rendered and the expenses were incurred before or after the date on which the RRRRA of 1976 became law.

This court will now briefly summarize in general terms the major contributions made by each of the petitioners, and their respective counsel, for the benefit of the Debtor's estate and, with regard to each, the fair and reasonable compensation and the reimbursement of expenses which are allowed.

1. UNITED STATES TRUST COMPANY OF NEW YORK, Trustee of the Debtor's Harlem River Division Mortgage under the Debtor's Indenture of First Mortgage dated January 1, 1953.

The evidentiary material shows that United States Trust Company incurred and expended $275.36 in expenses connected with its services on behalf of the Debtor's estate, and that neither the nature or amount of these expenses is contested. The court finds that the expenses were made, as alleged, that they were reasonable and necessary and they are approved and allowed under §77(c) (12), and are ordered reimbursed as hereinafter set forth.

The evidentiary material further shows that United States Trust Company incurred and expended $12,500 in payment for the services of H S Equities, Inc., successor to Hayden, Stone Incorporated, an investment banking firm, for services rendered from November, 1967 through April, 1968, as consulting economists and investment counselors, specializing in railroad securities. The court finds that this fee was incurred in the course of affording United States Trust Company additional information and education to enable it to perform its duty as trustee. It was chiefly for the purpose of protecting and enhancing the safety and value of the Harlem River Division Bonds, and is not chargeable to the Debtor's estate.

United States Trust Company, among other things, cooperated with the Debtor's estate in attempts to obtain tax relief from

state authorities, and in the construction of necessary betterments to railroad property. It met with its counsel and representatives of the Debtor to discuss a bond purchase program which would simplify the Debtor's financial structure and generally benefit participants in these proceedings. It also reviewed the question of using funds on deposit with it, as trustee, for the open market purchase and retirement of Harlem River Division bonds. It examined appraisals and agreements in connection with its participation in the sale for $1,205,000 of certain property subject to the Harlem River Division mortgage. It drafted, with the assistance of its counsel, the indenture for the Bonds assumed by the Penn Central.

While the court is satisfied that the United States Trust Company made a valuable contribution to the Debtor's estate in advocating and promoting the assumption by the Penn Central of the Harlem River mortgage debt, a substantial proportion of the effort and skill was devoted to protecting and enhancing the safety and value of the bonds for the direct benefit of the Harlem River Division bondholders, who should bear some of the expense. The court also finds that the representations set forth in the Trust Company's Exhibit C of its petition for allowances for compensation and expenses, dated June 12, 1975, *i.e.*, the affidavit of J. Sinclair Armstrong, Executive Vice President of United States Trust Company of New York, are true but, as stated in the affidavit, "[the] valuation of reasonable compensation for the Trust Company's services is based upon the substantial benefits which have accrued to the Debtor and to the Harlem River Division bondholders . . . ." It is the opinion of the court, therefore, that the fair share of the claim to be paid by the Debtor's estate as hereinafter set forth is $45,000.

1(a). *Carter, Ledyard & Milburn*, counsel for United States Trust Company, July 7, 1961 — April 1, 1975.

The evidentiary material shows that counsel incurred and expended $15,182.40 in connection with its services on behalf of the Debtor's estate, and that neither the nature or amount of

these expenses is contested. The court finds that the expenses were made as alleged, that they were reasonable and necessary and they are approved and allowed under §77(c) (12), and are ordered reimbursed, as hereinafter set forth.

In Exhibit A of the petition for compensation—the affidavit of Mr. Kernan which the court finds to be true—the firm of Carter, Ledyard & Milburn describe, *inter alia*, the most significant contributions made by them to the Debtor's estate. These are their separate and distinct efforts in connection with (1) the assumption of the Harlem River Division Bonds by the Penn Central; (2) the increase of $4,600,000 in the valuation of the Bronx freight yards brought about by the discovery on the second round of Commission hearings that the real estate valuation witness, Mr. McCann, had assumed lack of rail services to the Bronx freight yards; (3) the defeat of "six-months" claimants for priority status; (4) the prompt inclusion of the Debtor in the merger of the Pennsylvania and New York Central Railroads; and (5) the sale of a portion of the Oak Point Yard, which was subject to the Harlem River Division mortgage, with the result that the $1,205,000 proceeds from the sale are deposited in the registry of this court where they are now held, thus creating a fund which inures to the benefit of the Debtor's estate.

As stated by the court in ruling on the petition of the United States Trust Company, *supra*, a valuable contribution to the Debtor's estate resulted from the assumption by the Penn Central of the Harlem River mortgage debt, but a substantial proportion of the effort and skill was devoted to protecting and enhancing the safety and value of the bonds for the direct benefit of the Harlem River Division bondholders, who should bear some of the expense. This statement applies equally well to the United States Trust Company's counsel's participation in the litigation concerning the "six-months" claimants for priority status. They took an active part in this and contributed to its success, but the main responsibility for this litigation rested on Simpson, Thacher & Bartlett, together with counsel for the reorganization trustees.

After taking into consideration (a) the change in value of the dollar between 1969, the date when the court suggested the parties submit their claims for compensation, and 1975; (b) any alleged unnecessary duplication of services by counsel for the respective petitioners; and (c) the benefit to the Debtor's estate, as a whole, it is the opinion of the court that the fair share to be paid by the Debtor's estate, as hereinafter set forth, of the claim by Carter, Ledyard & Milburn for compensation for the services rendered in this case is $450,000. It is a complete and final fee and it carries with it no contingency fee, interest or rights.

2. The First Mortgage, 4% Bondholders Committee.

No application has been made for services or expenses on behalf of the Committee, itself, and none is allowed.

2(a). *Breed, Abbott & Morgan*, counsel for the First Mortgage 4% Bondholders Committee, July 8, 1961 — October 10, 1966.

The court finds that counsel's expenses in the amount of $864.22 were incurred in connection with the services of counsel, rendered for the benefit of the estate of the Debtor, the New Haven Railroad in reorganization, and that they were reasonable and necessary. They are, therefore, approved for payment under §77(c) (12) and are ordered reimbursed to counsel as hereinafter set forth.

With regard to the attorneys' claim for services, the court accepts as true the representations and statements made in that portion of their affidavit which details the work performed. There is a grave difficulty however, involved in it, which stems from the fact that services rendered exclusively for the benefit of the 4% Bondholders Committee are indiscriminately merged and intermingled with those rendered for the benefit of the bankruptcy estate of the New Haven as a whole. It is only the latter which are compensable out of the funds of the Debtor.

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Out of all of the items of service mentioned, about one-half can be said to have been of general benefit to the New Haven estate in its entirety. Weighing these in the light of their nature and importance the court concludes that just and fair compensation for the services performed is $42,200 which is to be paid out of the Debtor's estate as hereinafter set forth.

2(b). *Migdal, Tenney, Glass & Pollak*, counsel for the First Mortgage 4% Bondholders Committee, October 20, 1966 — December 31, 1973.

The evidentiary material shows that counsel incurred and expended $47,766.88 in expenses connected with its services on behalf of the Debtor's estate, and that neither the nature or amount of these expenses is contested. The court finds that, except for fees and expenses incurred in connection with the Penn Central reorganization proceedings (or the New Haven Railroad's interest therein) in the Eastern District of Pennsylvania, which are disallowed, the expenses were made as alleged, that they were reasonable and necessary and are approved and allowed under §77(c) (12), and are ordered reimbursed in the amount of $43,560.88 as hereinafter set forth.

The Migdal, Tenney firm succeeded the firm of Breed, Abbott & Morgan, who were counsel for the Committee July 8, 1961 — October 10, 1966. At that time the New Haven Railroad reorganization proceedings had been going on for more than five and one-half years. It was necessary that the newly retained counsel thoroughly familiarize themselves with the history and records of the proceedings up to that time and to weigh and consider the condition of the Debtor and the prospects for a successful reorganization. They noted the rapid erosion of the assets of the Debtor due to continuing operational losses. The I.C.C. had approved the Penn Central merger subject to the condition that the New Haven Railroad be included "on fair and equi able terms." The reorganization trustees had entered into a purchase agreement with the Pennsylvania and New York Central Railroads, and counsel for the Committee made a study and analysis

of the agreement. They objected to several of its provisions. They brought a suit in the United States District Court for the Southern District of New York seeking to enjoin the merger unless the New Haven was simultaneously included and unless adequate traffic protective conditions were imposed upon the Penn Central and parties participating in the *Penn Central Merger Cases*, 389 U.S. 486 (1968), both of which affected the Debtor's estate and contributed to the latter's enhancement of its value. All of these activities on the part of the Committee's counsel were designed to influence the reorganization in a direction which would stem the continuing losses and enhance the value of the assets. The reorganization trustees and the indenture trustees and their counsel were pursuing the same objectives but their arguments and the means proposed were not the same and there was little duplication in the proposals and arguments. After the Commission's review and report, its determination was certified to the reorganization court for review. Among the points raised, the Committee's counsel objected that the New Haven's interest in the Grand Central Terminal properties was improperly defined. They sought permission from the reorganization court to commence a plenary action in the courts of the State of New York to determine the rights of the New Haven in these properties. Because such an action could not be concluded in less than four or five years, the court in response denied that motion. Later, however, the court appointed a special master to make findings and report on this issue. The reorganization court adopted the special master's conclusions which enhanced the Debtor's position. At the time the I.C.C. issued its Fourth Supplemental Report, the 4% Bondholders Committee and the other creditors brought an action before the three-judge court protesting the inadequacy of the increase granted by the Commission in this latest report, which was also certified to the reorganization court for review. The counsel for the Committee argued certain distinct objections to the Fourth Supplemental Report and the decision by the Commission, before both courts. The judgments of the three-judge court and the reorganization court each increased the purchase price for the New Haven substantially. The Committee's counsel

subsequently appealed from the judgments of both courts, as did others of the creditors, and counsel argued before the Supreme Court the point that the underwriting provision in the reorganization court's judgment did not provide a proper equivalent for the property turned over by the New Haven to Penn Central. The case was argued before the Supreme Court by counsel's senior partner, Mr. Migdal, with Mr. Seymour, senior partner of counsel for the indenture trustee under the First and Refunding Mortgage Bonds and by special counsel, Mr. Auerbach, for the reorganization trustees. The Supreme Court resolved the matter of having two courts adjudicating the price issue and declared that the three-judge court under §5 of the Interstate Commerce Act was not required under these circumstances and set aside its judgment.

Important but different arguments were made by the three counsel. Mr. Migdal made the rebuttal argument. The judgment of the reorganization court was affirmed in part but vacated and remanded in part for further consideration of the form and nature of the payment by the Penn Central to the New Haven Railroad for its assets.

In the early stages of the inclusion proceedings there were negotiations between the New Haven Railroad creditors and the Pennsylvania and New York Central Railroads seeking a settlement of the pending issue. Mr. Migdal acted as lead counsel for the creditors in these negotiations. The negotiations did not succeed. The reorganization trustees of the New Haven Railroad did not participate as they felt bound by the agreement made with the two Railroads. The offer made by the Railroads was less than what the New Haven Railroad creditors were willing to accept and the judgment subsequently awarded by the Supreme Court was greatly in excess of any offer made to the creditors.

Pursuant to an order of this court, the reorganization trustees, in September, 1967, were authorized to file the second step of the two-step plan of reorganization with the I.C.C. Problems arose as to possible inferences which might be drawn from the form in which the order was issued. The Bondholders Committee through its counsel appealed to the Second Circuit which modified

the order as the Committee requested. Subsequently the I.C.C. issued its report following evidentiary hearings on "Step II" of the plan of reorganization. These hearings were followed by the Commission's report which also contained the I.C.C.'s reconsideration of the purchase price issue remanded to it by the reorganization court and the three-judge court and the issue of the approval of "Step II." When the plan was certified to this court, counsel for the Committee raised questions as to various portions of it, which the court found had merit, but it refused to pass upon the plan until final resolution of the amount to be paid by the Penn Central for the New Haven Railroad's assets had been made. The Committee's counsel participated in many occasions in conferences with counsel for the reorganization trustees and with counsel for the indenture trustees about various details of the proposed plan of reorganization and they made constructive suggestions with respect to the provisions of the plan and the tax consequences which would flow from it. Subsequent to the Penn Central's going into reorganization and the filing of the decision of the Supreme Court in the *New Haven Inclusion Cases*, they followed closely the Penn Central reorganization as it affected or as it was likely to affect the interests of the New Haven Railroad's estate. Although it was not granted leave to intervene in the Penn Central proceedings, it made suggestions or recommendations directly to the New Haven Railroad's trustee for his consideration.

After October 10, 1966 there were before the court no issues of significant importance relating to the New Haven Railroad's reorganization and its efforts to preserve and enhance its assets in which counsel for the 4½ Bondholders Committee was not heard or did not participate. While neither the reorganization court nor the reorganization trustee and his counsel, and the indenture trustees and their respective counsel were in full agreement, nevertheless the Debtor's estate and the course of the reorganization were benefited by the constructive and informed criticism for and against the many proposals which arose out of the myriad of complex issues in the case.

In general the Committee's counsel's narrative account of their activities is found by the court to be a correct statement of their participation in this reorganization and the fair and reasonable value of those services in this case is $632,015, plus such contingent addition as may later eventuate in accordance with a provision hereinafter recited.

2(c). There is incorporated into the claims for counsel fees filed by the First Mortgage 4% Bondholders Committee, the claim of Harry P. Lander, Esq., of New Haven, Connecticut, who was retained by the firms of Breed, Abbott & Morgan and Migdal, Tenney, Glass & Pollak as their representative Connecticut counsel. Mr. Lander's fees for service are fixed by the court at $2,000 and his out-of-pocket expenses at $900. These fees and expenses are to be paid out of the Debtor's estate as hereinafter set forth.

3. MANUFACTURERS HANOVER TRUST COMPANY, as Indenture Trustee for the Debtor's First and Refunding Mortgage.

With regard to the expenses incurred by the indenture trustee, none of the items has been contested. It is noted that, as set out in the affidavit of Mr. Kaestner, a Senior Vice President of the petitioner, the item of $91,398.26, an advance to Simpson, Thacher & Bartlett, has been properly deleted because it is reimbursable. The court finds the account of the sums expended is correct and that they were reasonable and necessary. They are, therefore, approved and allowed under §77(c) (12), and ordered to be paid as hereinafter set forth by the reorganization trustee to the petitioner in the amount of $103,018.34.

As far as services of the Manufacturers Hanover Trust Company as indenture trustee are concerned, the court would, on careful review, ordinarily find that there was sufficient unchallenged and competent evidence to qualify them as legitimate charges *except* for the fact that, subsequent to the Penn Central's filing of its petition in reorganization while the Manufacturers Hanover Trust Company was acting as indenture trustee for the New Haven's First and Refunding Mortgage (from which position it

resigned on June 21, 1971), it was required as indenture trustee for New York Central and/or Pennsylvania Railroad bonds to take certain actions *against* the interests of the estate of the New Haven Railroad in bankruptcy and did so. The circumstances were described in this court's opinion and order of August 20, 1975 in this case, which are repeated as follows:

> "It appears that Manufacturers, as indenture trustee for the New Haven's First and Refunding Mortgage, was on December 31, 1968 also indenture trustee for 18 mortgages of the New York Central and/or the Pennsylvania Railroads then merged into the Penn Central Transportation Company. This circumstance produced no conflicts between the interests of the various bondholders until after the Penn Central filed its application for reorganization on June 21, 1970 and after the Supreme Court decision in the *New Haven Inclusion Cases* on June 29, 1970. In August, 1970 the New Haven reorganization court called for statements of position by the parties in interest relative to the remand ordered by the Supreme Court in the *Inclusion Cases*. There arose at that time an important issue in which the Manufacturers, as indenture trustee for the New Haven's First and Refunding Mortgage and represented by the Simpson, Thacher firm of attorneys, was sharply at odds with the Manufacturers, as indenture trustee of the New York Central and Hudson River Railroad Company Gold Bond mortgage [in which capacity the same trust company was] represented by the Kelley, Drye firm of attorneys. On June 21, 1971 Manufacturers resigned as indenture trustee for the First and Refunding Mortgage of the New Haven. As recently as July 21, 1975, the Manufacturers sought leave of the United States District Court for the Eastern District of Pennsylvania to resign as indenture trustee for New York Central and Hudson River Railroad Company Gold Bond mortgage dated June 1, 1897, because of potential conflict with its former position as indenture trustee for the New Haven mortgage. So far as is known, Manufacturers continues to act as indenture trustee for the 17 remaining mortgages. The Commission,

therefore, will have before it for a finding, the factual issue of whether there has been and continues to be a conflict in interest on the part of the Manufacturers as former indenture trustee for the New Haven's First and Refunding Mortgage and as indenture trustee for the New York Central and/or Pennsylvania Railroad mortgages, and whether, if such conflict has existed, it has impeded or impedes in any way the New Haven reorganization."

The Manufacturers Hanover's petition to the Penn Central reorganization court to resign as indenture trustee for the New York Central and Hudson River Railroad Company Gold Bond Mortgage, dated June 1, 1897, was granted by the Penn Central reorganization court. It is undisputed that Manufacturers Hanover Trust Company is continuing to act as indenture trustee for each of the several bond issues of the New York Central and/or Pennsylvania Railroads which have interests contrary to those of the estate of the New Haven Railroad in reorganization. Moreover, the Manufacturers Hanover Trust Company, as indenture trustee of the New York Central and/or Pennsylvania Railroad bond issues, is of the opinion that it still has a duty to assert, on behalf of the bondholders of those issues, claims contrary to the interests of the New Haven estate, so long as it is in the interests of and the desire of the New York Central and/or Pennsylvania Railroad bondholders to do so.

The court finds that after the filing by the Penn Central of its petition for reorganization on June 21, 1970 and the filing of the judgment of the Supreme Court in the *Inclusion Cases* on June 29, 1970, the Manufacturers Hanover Trust Company, as indenture trustee for the New Haven Railroad's first mortgage bonds for nearly 25 years, 1941-1971, faced a conflict of interest with its position as indenture trustee for the New York Central and Hudson River Railroad Company Gold Bond Mortgage as well as it did with its position as indenture trustee for the 17 other New York Central and/or Pennsylvania Railroad bond issues. This was dramatized by the successful action which Manufacturers Hanover, as indenture trustee for the Gold Bonds, brought,

through the attorneys for its trust department, Kelley, Drye, Warren, Clark, Carr & Ellis, against the New Haven reorganization trustee on the ground that the New Haven reorganization court lacked jurisdiction, on remand of the *Inclusion Cases* by the Supreme Court, to pass upon the secured status of the New Haven's claim for payment for the New Haven's sale and transfer of its operating property.

The evidence shows that the Chairman of the Board of Manufacturers Hanover Trust Company was of the opinion that the Trust Company had become disqualified to continue to act as indenture trustee for all of the bond issues in question, *i.e.* both that of the New Haven and the 18 of the New York Central and/or Pennsylvania Railroads, and he so advised the appropriate officers of the Trust Company. The court is in entire agreement with that opinion. Although the Manufacturers Hanover, in apparent good faith, sought to resign from all of them and at the same time went to extraordinary lengths throughout the eastern United States to get qualified corporate banks to agree to act as successor indenture trustees, it was unable to do so. It did find a successor for the Gold Bond issue and on September 4, 1975 the Manufacturers Hanover's resignation, as indenture trustee for the Gold Bonds, was accepted by the Penn Central reorganization court and the successor indenture trustee was appointed. The New Haven reorganization court ran into the same problem when, by the most diligent and thorough searches and inquiries by the Manufacturers Hanover Trust Company, Simpson, Thacher & Bartlett, its counsel, and the New Haven reorganization trustee(s) and their counsel no bank could be found to act as successor trustee for the New Haven's first and refunding mortgage bonds. Although the underlying mortgage itself specified that a successor trustee must be a qualified bank, the court, on the basic principal that it cannot permit a valid trust to fail for lack of a trustee, appointed Lawrence W. Iannotti, Esquire, a qualified practicing lawyer in New Haven, Connecticut, as successor indenture trustee under the first and refunding mortgage 4½ bond issue of the New Haven Railroad. Later in January, 1972, when the Chase Manhattan Bank, N.A., resigned,

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because it was a creditor of the Penn Central, the court appointed Jacob D. Zeldes, Esquire, a qualified practising lawyer in Bridgeport, Connecticut, as successor indenture trustee under the New Haven Railroad's general mortgage (second series income bonds). This is not to suggest that a similar course should have been followed in the cases of the remaining 17 New York Central and/or Pennsylvania Railroad bond issues. For what it is worth, it is the opinion of this court that, considering the size and complexity of the Penn Central reorganization, such an arrangement would probably be entirely impractical. It is also understandable that those carrying on the reorganization proceedings of the Penn Central would probably not rise to their feet with unanimous outbursts of enthusiasm to see 17 new successor trustees with 17 new counsel enter the ballpark. Nevertheless the prospect of more problems superimposed upon already existing ones of immense difficulty cannot operate to condone a breach of fiduciary duty or justify it.

Simpson, Thacher & Bartlett, as Manufacturers Hanover's counsel, argue there was no breach of fiduciary duty by the Trust Company for these reasons:

Where a bank, such as the Manufacturers Hanover Trust Company, is trustee under two separate trusts and the cestuis of the two trusts are on opposite sides of a controversy involving the interests of the trusts, the bank can avoid responsibility for a breach of fiduciary duty if it arranges to have counsel for one department of the bank appear in the controversy in the name of the bank on the side of one cestui (the New Haven); and also arranges to have counsel for another department of the bank appear in the controversy in the name of the bank on the side of the other cestui (the Penn Central). In its reply brief it said,

> "Admittedly, a potential conflict of interest existed, which Manufacturers had already recognized and sought to avert. The essence of the problem Manufacturers faced was that it ran the risk of breaching its fiduciary duty to one group of bondholders or the other if it failed fully to represent their interests during the time before it could resign."

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It, therefore, weighed the relative risks of liability if it took or appeared to take one side or the other between the two cestuis; its first solution was to assign one of its lawyers to one side and another one of its lawyers to the other. The startling result was that, on opening court one morning, the New Haven reorganization court was handed a brief by the Simpson, Thacher firm from Manufacturers Hanover Trust Company for the New Haven side of the case, and it was then handed another brief by the Kelley, Drye firm from the Manufacturers Hanover Trust Company for the other side of the same case. This may have been (to adapt a remark by Prof. Freund) an exercise of the delicate art of threading that fine line "between partiality on the one hand and impartiality on the other." But it was not proper action by an indenture trustee. Manufacturers Hanover should have resigned from both, as its Chairman had said, but apparently no one felt the necessity of following through on his admonition. Even though the Manufacturers Hanover is a very large banking institution, it cannot be excused by saying that it was so large its right hand could not know what its left hand was doing nor could it be excused by doing through its attorneys and agents what it was forbidden to do as a corporate person. Its next solution was to resign from the indenture of the New Haven and much later, after being granted leave by the Penn Central reorganization court, it resigned as indenture trustee for the Gold Bond mortgage bonds. Meanwhile it has continued as indenture trustee for the remaining New York Central and/or Pennsylvania Railroad bond issues.

In its capacity as the indenture trustee for these 17 issues, it asserts that it is its duty to oppose the claim of the New Haven reorganization trustee. Manufacturers Hanover's counsel in its brief makes reference to the New Haven reorganization trustee's citation of *Woods* v. *City National Bank & Trust Company of Chicago, supra*, in support of the disqualification of Manufacturers Hanover Trust Company as indenture trustee for the New York Central and/or Pennsylvania Railroad bonds; but, as counsel for the Trust Company, Simpson, Thacher asserts that there was no breach of fiduciary duty, and says:

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> "The [New Haven reorganization t]rustee's discussion of the conflicts question is based on *Woods* v. *City Nat'l Bank & Trust Co.*, 312 U.S. 262 (1941). As the Trustee notes, 'the essential basis for the disallowance of these claims by the reorganization court was that the claimants were pursuing interests of their own that were either of no benefit to the estate or, more often, were adverse to it.' (Trustee's Statement, at 24). *Woods*, therefore, is inapposite since Manufacturers neither pursued any interest of its own nor pursued any interest adverse to the estate."

But it has "pursued [an] interest adverse to the New Haven estate" in pursuing the interests of the 18 New York Central and/or Pennsylvania Railroad indentures and it declares it has a duty to continue to do so. That is precisely what it has been doing over the past five years, and the *Woods* case declares it to be a breach of fiduciary duty. The law does not countenance such activity by a fiduciary—even an indenture trustee. *Woods* v. *City National Bank & Trust Company of Chicago, supra; In re Boston & Providence Corp., supra*, 260 F. Supp. at 422.

Too much, of course, should not be read into or inferred from such phrases as "breach of fiduciary trust" or "disqualified . . . as indenture trustee". Such descriptive words do not say or imply that the Trust Company indulged in any conduct of a criminal nature or sought in any way to take or use other persons' property for its own use, or otherwise acquire any personal gain for itself. The Manufacturers Hanover Trust Company, through no action if its own, found itself in a position between conflicting interests, as to each of which it was in a position of indenture trustee. It could not help one without hurting the other.

The Trust Company, as indenture trustee for the New York Central and/or Pennsylvania Railroad indentures did speak of resigning but was dissuaded from doing so. It never took a strong stand for that proposition and never, when contemplating its dilemma, refused to serve, following this stand by pressing for or seeking an authoritative court declaration of its rights and duties, as it should have done.

While it is clear that the breach of fiduciary duty by the Manufacturers Hanover to the New Haven's first mortgage bondholders has impeded, and therefore damaged, the New Haven reorganization trustee's collection of the sums owed the New Haven estate from the Penn Central for the transferred properties of the New Haven and has frustrated the further development of a plan of reorganization for the New Haven, the extent of such damage cannot be ascertained at the present time. Its measure turns on the amount of money which the New Haven estate will receive in payment of the Supreme Court's judgment on the price to be paid by the Penn Central for the New Haven property. If the principal amount of that purchase price is paid in full, the damage from the Manufacturers Hanover's breach of trust would be trivial and de minimis. If no money were received by the New Haven on the purchase price, the damage would greatly exceed the full amount of the Manufacturers Hanover claim for services and expenses. If the purchase price payment were ultimately to fall somewhere between nothing and the entire amount due under the terms of the judgment, the measure of the damage inflicted by the Manufacturers Hanover would go inversely up or down accordingly. The court finds that the Manufacturers Hanover Trust Company, as indenture trustee for the New Haven's First and Refunding Mortgage bonds, breached its fiduciary duty to the New Haven estate in reorganization and has damaged it. While *Woods* v. *City National Bank & Trust Company of Chicago, supra*, authorized a complete disallowance of fees for services and reimbursement of expenses, later cases in this Circuit and others have tempered this somewhat. See, *Berner* v. *Equitable Office Building Corp.*, 175 F.2d 218 (2 Cir. 1949); *Silbiger* v. *Prudence Bonds Corp.*, 180 F.2d 917 (2 Cir.), *cert. denied* 340 U.S. 813 (1950); *Chicago & West Towns Rys.* v. *Friedman*, 230 F.2d 364 (7 Cir.), *cert. denied* 351 U.S. 943 (1956).

This court will allow Manufacturers Hanover Trust Company's claim for reimbursement of expenses in full. There has been no objection to them, qua proper expenditures, they are found to have been reasonable and necessary and they may be paid out of the debtor's estate in the amount of $103,018.34 as hereinafter directed.

In lieu of an absolute disallowance or reduction of the Trust Company's petition for *a fee* for services as indenture trustee for the New Haven's First and Refunding Mortgage, the court will deal with its petition as follows:

The Trust Company's claim for services rendered in the amount of $304,416.67, or any recoverable part of it, is ordered to be treated as contingent. The Manufacturers Hanover Trust Company is ordered to accept in full accord and satisfaction of the claimed sum and any and all claims for services, rendered by it as indenture trustee for the New Haven's First and Refunding Mortgage in any manner whatsoever, one-quarter (¼) of one per cent. (1%) of all payments made on and after the date of this judgment, to the New Haven estate in reorganization, for and on account of the purchase price, to be paid by the Penn Central for properties of the New Haven, as fixed by the judgment of the Supreme Court in the *Inclusion Cases*. Said payment of ¼ of 1% to the Manufacturers Hanover Trust Company shall in no event exceed $304,416.67 and no interest or other increments shall be added to this sum. In the event that the Manufacturers Hanover Trust Company declines so to accept whatever may accrue to it under the foregoing computation, the Trust Company's claim for services against the New Haven estate shall be disallowed in toto.[3]

3(a). *Simpson, Thacher & Bartlett*, counsel for Manufacturers Hanover Trust Company, July 7, 1961 — August 30, 1971.

Simpson, Thacher & Bartlett's charges for attorneys' fees, July 7, 1961 — August 30, 1971, are presented as expenses of the Manufacturers Hanover Trust Company as indenture trustee for the New Haven's First and Refunding Mortgage.

At the outset the court should call attention to the remarks made by the trustee for the debtor, in his statement of position, relative to the Simpson, Thacher firm's services in this matter, involving its client's breach of trust. They are as follows:

> "If the Court considers Manufacturers' activities, in light of its conflict of interest, to warrant either disallowance or re-

> duction of its fee, it is the Trustee's position that the Court should take into account that no question has ever been raised concerning the conduct of its counsel, Simpson, Thacher & Bartlett. Even though, as required under §77(c) (12), the petitioner is Manufacturers, rather than its counsel, and even though counsel can theoretically look to the client for payment, as a practical matter, a reduction in the amount allowed as reimbursement for legal fees is likely to impact persons who, in the Trustee's view, have benefited the Estate and as to whom no misconduct has even been intimated." (Footnote omitted.)

Although the court disagrees with the conclusions reached by counsel for the Manufacturers Hanover Trust Company in its brief that there were sufficient reasons given by the Trust Company to excuse it from a charge of breach of its fiduciary duty as indenture trustee for the New Haven's First and Refunding Mortgage bonds, it does agree with the statement by the New Haven reorganization trustee relating to the Simpson, Thacher firm. Such deductions as are made from the firm's statement of its services to the New Haven estate are for reasons which are in no way connected with any breach of fiduciary trust by the Manufacturers Hanover Trust Company.

The evidentiary material presented on behalf of the firm by Horace McAfee, Esquire, a senior partner, in his affidavit gave an excellent general narrative account of its participation in the reorganization proceedings of the New Haven Railroad from their inception on July 7, 1961 to August 30, 1971. With this account there was attached a thorough, detailed appendix which particularized everything done by the Simpson, Thacher firm as counsel to the indenture trustee for the New Haven's First and Refunding Mortgage bonds.

In general, the law firm of Simpson, Thacher & Bartlett, as counsel for the indenture trustee, attended and participated in every court hearing (other than a few which were simply routine), which concerned the reorganization of the New Haven Railroad. They also represented the indenture trustee in the hearings before

the three-judge court in the Southern District of New York and at the hearings held by the special master on the valuation of the Grand Central Terminal Properties.

From time to time they met and conferred with the reorganization trustees or trustee and their counsel on various problems in the reorganization, including financing (such as Trustees' Certificates), tax problems, leasing of cars and equipment, opposing harmful proposed amendments to New York State tax laws, sales of pieces of property subject to the mortgage of which Manufacturers Hanover Trust Company was indenture trustee, involving partial releases from the mortgage and the application or use of the proceeds, work on a plan of reorganization of the Boston and Providence Railroad, representation of the indenture trustee in aid of the New Haven estate in reorganization concerning certain abandonment proceedings and an effort to discontinue the costly New Haven Railroad passenger service, including a hearing before an I.C.C. hearing examiner.

With the reorganization trustees of the New Haven, and cooperation of the United States Trust Company, as indenture trustee for the Harem River Division Mortgage, Simpson, Thacher payed a very active and important role including judicial proceedings before this court, the United States Court of Appeals for the Second Circuit and petitions for certiorari to the Supreme Court, in barring the high priority claims of "six months" creditors of the New Haven, including per diem claims for a total of approximately $6,000,000.

After the reorganization trustees of the New Haven had negotiated a tentative contract with the officers of the Pennsylvania and New York Central Railroads, which were seeking to merge, pursuant to which the New Haven reorganization trustees were to turn over the transportation plant of the New Haven Railroad to the merged railroads for approximately $125,000,000, subject to the approval of the New Haven reorganization court, the Pennsylvania and New York Central Railroad negotiators requested and were given to understand that the New Haven reorganization trustees would not seek an increase in the amount

of the consideration to be paid by the merged Pennsylvania and New York Central Railroads. The New Haven reorganization trustees had thus established a beginning and a foundation for an inclusion price. The agreement never came before the reorganization court for approval and it was routinely sent along to the I.C.C. for initial study and action. All of the petitioners (or their predecessors, as the case may be) took the position that the consideration moving to the New Haven estate was wholly inadequate. As the New Haven reorganization trustees felt disqualified to seek changes in the tentative contract because of their understandings with the negotiators (a position which the court understood and expressly approved), the court left it entirely in the hands of the petitioners (or their predecessors), at the time, to oppose the contract and seek a larger payment or price for the property of the New Haven. This involved pressing for disapproval of the agreement by the I.C.C. which that body denied, hearings before the three-judge court in the Southern District of New York, a lengthy trial on review in the reorganization court, followed, after a grant of certiorari, by briefing and arguments before the Supreme Court. As counsel representing the indenture trustee for the New Haven's First and Refunding Mortgage bonds, Simpson, Thacher pulled the laboring oar in presenting the case before the Commission in the lower courts, and particularly in the Supreme Court. The senior partner of Simpson, Thacher & Bartlett prepared the brief and made the principal argument before the Supreme Court. He was ably seconded by the arguments of Attorney Migdal for the Bondholders Committee, and by Attorney Auerbach, special counsel to the reorganization trustee. Attorney Bushby of Dewey, Ballantine, Bushby, Palmer & Wood, prepared and filed an excellent brief.

The decision of the Supreme Court fixed the price to be paid for the New Haven properties at $174,600,000. The difference between this amount and approximately $125,000,000, *i.e.* $49,600,000, is roughly what the petitioners claim is the portion of the judgment attributable to their efforts except, they say, that there should be credited to them errors in the I.C.C. computation which three of them discovered. (1) The Dewey, Ballan-

tine firm, counsel for Chase Manhattan Bank N.A., spotted a double counting by the I.C.C. of $16.2 million paid in taxes; (2) the Simpson, Thacher firm, as counsel for Manufacturers Hanover Trust Company, discovered that cost of liquidation had not been discounted to present value, resulting in an understatement of $3,800,000; and (3) the Carter, Ledyard firm found there was an error in the New Haven estate's appraiser's valuation of the Bronx freight yards, resulting in an underappraisal of $4,600,000. Disclosure of these errors in the I.C.C. valuation determination added $24,600,000 to its computation and to the difference between the first I.C.C. valuation and the ultimate price fixed by the Supreme Court.

Another achievement to which Simpson, Thacher & Bartlett contributed was the holding by the Supreme Court that the shares of stock of the Penn Central, to be used in partial payment to the New Haven Railroad, particularly in the light of Penn Central's filing for reorganization under §77, was substantially overvalued for the purpose of "underwriting" the purchase price as ordered by this court and that part of the case was remanded "to determine the form that Penn Central's consideration to New Haven should properly take and the status of the New Haven estate as a shareholder or creditor of Penn Central." *New Haven Inclusion Cases, supra*, 399 U.S. 392 at 489.

The foregoing illustrative high points of the services rendered by the Simpson, Thacher firm, if studied in connection with the thorough review of the history of the New Haven reorganization proceedings, contained in the Supreme Court opinion in the *New Haven Inclusion Cases*, will reveal the complexity and, to a degree the novelty of the wide variety of issues with which the firm was required to deal.

The detailed account of the part it played and the contribution it made to the reorganization proceedings, are well set out in the affidavit of Horace J. McAfee, Esquire, and the attached appendix, as mentioned above. The court finds that the matters therein recited and the representations made are true and correct and that the fair and reasonable value of their services as counsel to

Manufacturers Hanover Trust Company as indenture trustee for the New Haven's First and Refunding Mortgage bonds is $808,000, plus such contingent addition as may later eventuate in accordance with a provision hereinafter recited.

4. CHASE MANHATTAN BANK, N.A., as Trustee under the Debtor's General Income Mortgage. July 7, 1961 — March 31, 1972.

The evidentiary material shows that Chase Manhattan Bank, N.A., incurred and expended $84,648.83 in expenses connected with its services on behalf of the Debtor's estate. The court had previously indicated at a chambers conference held on March 8, 1966 that it would not authorize payment out of the Debtor's estate at that time for further studies to be made by Messrs. Wyer and Dick, but that this petitioner together with the First and Refunding Mortgage Trustee could later apply for reimbursement for these expenses. Inasmuch as neither the nature or amount of these expenses claimed by the Chase Manhattan Bank is contested, the court finds that all of the expenses were made, as alleged, and that they were reasonable and necessary, and they are approved and allowed under §77(c) (12), and are ordered reimbursed as hereinafter set forth.

The Chase Manhattan Bank contributed to the benefit of the Debtor's estate as a whole by its efforts to procure the services of Mr. Wyer for consultation work to be done by him with respect to a freight-only study which was being prepared by the New Haven Railroad staff and for a study regarding the savings which might eventuate in the event of inclusion of the New Haven's freight operations in Penn Central. It also contributed to the benefit of the debtor's estate by its cooperation and "watchdog" services in connection with the day-to-day operation of the New Haven Railroad, for example the leasing arrangements by the reorganization trustees with the New York Port Authority, as set out generally in the affidavit of Mr. Schreiber and incorporated by reference in the affidavit of Charles F. Ruge, a Vice President of The Chase Manhattan Bank, N.A. The court finds

that these representations are true and it is the opinion of the court that the fair share of the claim to be paid as hereinafter set forth by the Debtor's estate of the request for compensation made by the Chase Manhattan is $44,400.

4(a). *Dewey, Ballantine, Bushby, Palmer & Wood,* counsel for Chase Manhattan Bank, N.A., July 7, 1961 — March 31, 1972.

With regard to the attorneys' claim for services, the court accepts as true the representations and statements made in the affidavit of Joseph Schreiber which details the work performed. Since the beginning of these reorganization proceedings, there were before the court and the I.C.C. no issues of significant importance relating to the New Haven Railroad's reorganization and its efforts to preserve and enhance its assets in which counsel for Chase Manhattan Bank was not heard or did not participate. The Debtor's estate was benefited in particular by the observation of Mr. Schreiber that the I.C.C. had included $16.2 million dollars of accrued real estate taxes erroneously in liquidation expenses. It took appeals to the three-judge court and to the reorganization court, twice, before this error was finally corrected by the I.C.C. The Debtor's estate was also particularly benefited by the separate and distinct efforts of counsel for the Chase Manhattan Bank in connection with the claim on the value of that portion of New Haven's interest in the net income from the Grant Central hotel and office buildings; the inclusion of the New Haven in the Penn Central merger and the evaluation studies of the New Haven's assets carried out by Mr. Wyer; and the appeal to the Supreme Court relative to the *Inclusion Cases.*

After taking into consideration any alleged duplication of services by counsel for the respective petitioners and the benefit to the Debtor's estate, as a whole, it is the opinion of the court that the fair share to be paid as hereinafter set forth by the Debtor's estate of the claim by Dewey, Ballantine, Bushby, Palmer & Wood for compensation is $706,337, plus such contingent amount as may, at a future time, be payable as hereinafter provided.

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5. LAWRENCE W. IANNOTTI, *Successor Trustee* under the Debtor's First and Refunding Mortgage.

Lawrence W. Iannotti, successor indenture trustee under the New Haven's First and Refunding Mortgage, has petitioned for compensation for his services as trustee and his out-of-pocket expenses and for the services and expenses of his counsel, Tyler, Cooper, Grant, Bowerman & Keefe, for the period from July 1, 1971 to June 28, 1974.

The court finds that the statements and representations recited in the petitioner's verified petition are true and correct with the exception of an error in mathematical computation of the fees of the petitioner's attorneys which requires a disallowance of $2,330.00. The statement of out-of-pocket expenses amounts to a total of $4,481.38. The expenses are found to have been reasonable and necessary and are ordered to be paid as hereinafter indicated.

The successor trustee fully and conscientiously performed all of the necessary watchdog services in protection of the bond issue and the New Haven estate. In addition he vigorously and skillfully participated in the litigation protecting the Debtor's estate and developed proposals for advancing payments on account of the purchase price for the New Haven properties.

After considering the successor trustee's performance of the watchdog services and his contributions in addition to them, and considering the great amount of time and energy he was required to expend to gain an historic knowledge of the New Haven reorganization prior to the date of his appointment on July 1, 1971, and a grasp of the problems current at that time, the court is satisfied that the compensation for his services, including those of his counsel, to the New Haven estate should be fixed at $68,100, as just and reasonable compensation, which is ordered to be paid in accordance with the schedule hereinafter set forth.

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6. JACOB D. ZELDES, *Successor Indenture Trustee* under the Debtor's General Income Mortgage.

Jacob D. Zeldes, successor indenture trustee for the General Income Mortgage Bonds, has petitioned for compensation for his services as successor indenture trustee and his out-of-pocket expenses as well as the expenses for the services of his counsel Zeldes, Needle and Cooper, P.C. These cover the period February 11, 1972 to June 15, 1975.

The court finds that the statements and representations recited in the petitioner's verified petition are true and correct and that his bill for out-of-pocket expenses in the amount of $1,165.91 is for items that were necessary and the charges are reasonable in amount. It is therefore ordered that they be paid from the Debtor's estate, as hereinafter indicated. The court further finds that the petitioner's services benefited the Debtor's estate and that the legal services rendered by his firm made a valuable contribution to the estate. The indenture trustee fully performed the required watch-dog services and in addition he exercised great skill in appearing at contested hearings before I.C.C. and the reorganization court on many occasions. His account of services rendered begins five days before his appointment as indenture trustee became official, because he had been offered and agreed to accept the appointment and immediately commenced the onerous task of gaining an understanding of the New Haven reorganization proceedings and the problems existing at the time. It is the opinion of the court that just and reasonable compensation to the successor indenture trustee for his services to June 15, 1975 is $33,971, to be paid as hereinafter provided by the Debtor's estate.

Contingent fee claims

Three of the law firms whose services have been discussed above, have claimed that they participated in these proceedings on a contingent fee basis, which presupposes that the action or proceeding has been carried through to the end, a result has been achieved in the form of a recovery of money, out of which a

percentage, previously agreed upon, is taken out and is paid to the attorney as his fee. In the present case there is no substantial cash recovery. The claims for having benefited the estate almost entirely concern matters leading up to and participating in the prosecution of the *New Haven Inclusion Cases* and the achieving of a judgment. When counsel say they achieved a great result, they are not contradicted, but it did not include a recovery of the purchase price for the New Haven properties. For the purpose of computing a contingent fee, it is only a money recovery that counts in the end. By this standard nobody knows at present how good the result really was. The present holding that the petitioners are entitled to recover certain fees, eliminates the risk of loss that they had carried but the fees are less than what a true contingent fee agreement would provide. What evidence there was of fee agreements implied that they were not entirely contingent. In case nothing had been recovered, it is fairly clear that the petitioners would have at least shared the loss. Nevertheless there was a kind of quasi contingent fee arrangement in which one chance factor was whether or not something would be granted by the court as allowances out of the Debtor's estate; and the other contingency was whether or not there might be a cash recovery under the Supreme Court judgment. Under the circumstances, however, allowances in the range of customary contingent fees could not be granted. The New Haven estate cannot justly be required to pay out, over the next few years, any more than the total expenses and non-contingent fees already awarded herein.

If, however, payments were to be made to the New Haven reorganization trustee for the property taken by the Penn Central, it is the court's opinion that the principal contingency would have occurred—a result stemming in substantial part from the contributions made by the petitioners to the New Haven reorganization proceedings.

It is, therefore, further ordered that in the event that there is a future recovery by the reorganization trustee of the New Haven Railroad of payments by the Penn Central or its successors or

assigns, on account of the purchase price fixed by the Supreme Court for the New Haven properties in the *New Haven Inclusion Cases*, the reorganization trustee or his successor or successors shall pay to:

(1) MANUFACTURERS HANOVER TRUST COMPANY for and on account of the services of its attorneys Simpson, Thacher and Bartlett,

¼ of 1% of such payment or payments;

(2) FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE for and on account of the services of its attorneys Migdal, Tenney, Glass & Pollak,

¼ of 1% of such payment or payments; and

(3) CHASE MANHATTAN BANK, N.A., for and on account of the services of its attorneys Dewey, Ballantine, Bushby, Palmer & Wood,

⅛ of 1% of such payment or payments.

Schedule of Payments:

The payments (other than contingent fee payments) ordered to be made from the Debtor's estate by the New Haven reorganization trustee to the petitioners for services contributed to the New Haven estate pursuant to the terms of this decision will be made to the following petitioners, in the amounts specified at the time indicated:

UNITED STATES TRUST COMPANY OF NEW YORK will be paid $5,625.00 on or before September 30, 1976 and $5,625.00 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been in full.

UNITED STATES TRUST COMPANY OF NEW YORK, on behalf of its counsel, Carter, Ledyard & Milburn, will be paid $56,250.00 on or before September 30, 1976 and $56,250.00 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

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FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE will be paid on behalf of its counsel Breed, Abbott & Morgan, $5,275.00 on or before September 30, 1976 and $5,275.00 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE will be paid on behalf of its counsel Migdal, Tenney, Glass & Pollak, $79,001.88 on or before September 30, 1976 and $79,001.88 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

FIRST MORTGAGE 4% BONDHOLDERS COMMITTEE will be paid on behalf of its counsel Harry P. Lander, $250.00 on or before September 30, 1976 and $250.00 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

will be paid in Full

MANUFACTURERS HANOVER TRUST COMPANY will be paid on behalf of its counsel Simpson, Thacher & Bartlett, on or before September 30, 1976, $101,000.00 and $101,000.00 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

CHASE MANHATTAN BANK, N.A. will be paid $5,550.00 on or before September 30, 1976 and $5,550.00 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

CHASE MANHATTAN BANK, N.A. will be paid on behalf of its counsel Dewey, Ballantine, Bushby, Palmer & Wood, $88,292.13 on or before September 30, 1976 and $88,292.13 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

LAWRENCE W. IANNOTTI, Successor Trustee, will be paid $8,512.50 on or before September 30, 1976 and $8,512.50 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

JACOB D. ZELDES, Successor Indenture Trustee, will be paid $4,246.38 on or before September 30, 1976 and $4,246.38 on each and every March 30th and September 30th thereafter to and including March 30, 1980, when said principal sum shall have been paid in full.

Reimbursement of expenses to the petitioners to whom they have been heretofore awarded shall be payable: one-half (½) on or before January 6, 1977 and the remaining one-half (½) on or before July 6, 1977.

All payments for services and for reimbursement of expenses as herein awarded, whether contingent or not, shall be payable *without interest* and shall be *final* as of the last date of the services rendered as alleged in their respective petitions and not interim, except in the cases of petitioners Iannotti and Zeldes as to each of whom the payments are interim.[4]

The court retains jurisdiction over the orders specifying the dates and amounts of payments and all elements of the orders for contingent fee payments, all of which are subject to amendment or modification as justice and equity shall require.

Dated at New Haven, Connecticut, this 30th day of June, 1976.

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

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Footnotes:

[1] The three original trustees were Richard J. Smith, William J. Kirk, and Harry W. Dorigan. Shortly after the death of Trustee Dorigan, Trustee Kirk resigned on February 28, 1969 and Trustee Smith became sole trustee on March 1, 1969 and has continued as sole trustee since that time.

[2] The ABA Code of Professional Responsibility, DR-106B in pertinent part, mentions the factors to be considered as guides in determining the reasonableness of an attorney's fee:

> "(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
>
> (3) The fee customarily charged in the locality for similar legal services.
>
> (4) The amount involved and the results obtained.
>
> (5) The time limitations imposed by the client or by the circumstances.
>
> (6) The nature and length of the professional relationship with the client.
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
>
> (8) Whether the fee is fixed or contingent."

[3] This forfeiture provision is not intended to become operative simply through the taking of an appeal from this judgment by the Manufacturers Hanover Trust Company.

[4] The New Haven Reorganization Trustee is empowered, in his discretion, to anticipate any of the payments ordered to be made under the within schedule of payments, that is, he may pay any one or more of them in advance of the date on which it is ordered to be paid under the schedule.

IX 3364

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

JUDGMENT

This cause having come on for hearing on certain applications for compensation for services and expenses rendered and expended by the several applicants for the benefit of the Debtor's estate, and said applications having been duly noticed and all persons having been heard or given an opportunity to be heard;

And the Court having heretofore ordered and adjudged that the former jurisdiction of the Interstate Commerce Commission over fee applications under Section 77(c) (12) had been divested as of February 5, 1976, and vested in this Reorganization Court;

And this Court having filed, on June 30, 1976, an Opinion and Order On Applications Pursuant To Section 77(c) (12) of the Bankruptcy Act, For Compensation and For Reimbursement of Expenses Incurred on Behalf of the Bankrupt Estate;

And it now being duly advised in the premises, it is ORDERED, ADJUDGED and DECREED that the following petitioners be awarded the following amounts, including fees and expenses of their counsel:

(10689)

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(1) United States Trust Company, compensation for itself in the amount of $45,000.00 and expenses for itself in the amount of $275.36; compensation for its counsel, Carter, Ledyard & Milburn, in the amount of $450,000.00 and expenses for its counsel in the amount of $15,182.40;

(2) First Mortgage 4% Bondholders Committee, compensation for its counsel

(a) Breed, Abbott & Morgan in the amount of $42,200.00 and expenses for that counsel in the amount of $864.22;

(b) Migdal, Tenney, Glass & Pollack in the amount of $632,015.00 and expenses for that counsel in the amount of $43,560.88;

(c) Harry P. Lander in the amount of $2,000.00 and expenses for that counsel in the amount of $900.00;

(3) Manufacturers Hanover Trust Company, expenses for itself in the amount of $103,018.34 and compensation for its counsel, Simpson, Thacher & Bartlett, in the amount of $808,000.00 and expenses for its counsel in the amount of $15,234.81;

(4) Chase Manhattan Bank, N.A., compensation for itself in the amount of $44,400.00 and expenses for itself in the amount of $84,648.83 and compensation for its counsel, Dewey, Ballantine, Bushby, Palmer & Wood in the amount of $706,337.00 and expenses for its counsel in the amount of $9,605.74;

(5) Lawrence W. Iannotti, Esquire, compensation for himself in the amount of $68,100.00 and expenses for himself in the amount of $4,481.38;

(6) Jacob D. Zeldes, Esquire, compensation for himself in the amount of $33,971.00 and expenses for himself in the amount of $1,165.91; and

It is FURTHER ORDERED that the foregoing expenses shall be paid one-half on or before January 6, 1977 and the remaining one-half on or before July 6, 1977; and

It is FURTHER ORDERED that matters of compensation shall be paid in eight (8) equal installments; the first installment to be paid on or before September 30, 1976 and a like amount on each and every March 30 and September 30 thereafter to and including March 30, 1980, when said principal sum shall have been paid in full; and

It is FURTHER ORDERED that in the event that there is a future recovery by the reorganization trustee of the New Haven Railroad of payments by the Penn Central or its successors or assigns, on account of the purchase price fixed by the Supreme Court for the New Haven properties in the *New Haven Inclusion Cases*, the reorganization trustee or his successor or successors shall pay to:

(1) Manufacturers Hanover Trust Company ¼ of 1% of all payments made on and after the date of this judgment, to the New Haven Estate in reorganization, for and on account of the purchase price, to be paid by the Penn Central for properties of the New Haven, as fixed by the judgment of the Supreme Court in the *Inclusion Cases*. Such total payment or payments shall equal but in no event exceed $304,416.67, and no interest or other increments shall be added to this sum, which said Trust Company shall receive in full accord and satisfaction of its claim for its own services, rendered the New Haven Estate, provided in the event the Manufacturers Hanover Trust Company declines so to accept whatever may accrue to it under the foregoing computation the Trust Company's claim for services against the New Haven Estate shall be disallowed in toto; and to Manufacturers Hanover Trust Company for and on account of the services of its attorneys Simpson, Thacher and Bartlett, ¼ of 1% of such payment or payments;

(2) First Mortgage 4% Bondholders Committee for and on account of the services of its attorneys Migdal, Tenney, Glass & Pollack, ¼ of 1% of such payment or payments; and

(3) Chase Manhattan Bank, N.A., for and on account of the services of its attorneys Dewey, Ballantine, Bushby, Palmer & Wood, ⅛ of 1% of such payment or payments

All payments for services and for reimbursement of expenses as herein awarded, whether contingent or not, shall be payable *without interest* and shall be *final* as of the last date of the services rendered as alleged in their respective petitions and not interim, except in the cases of petitioners Iannotti and Zeldes as to each of whom the payments are interim.

The Court retains jurisdiction over dates and amounts of payments and all elements of the orders for contingent fee payments, all of which are subject to amendment or modification as justice and equity shall require.

Dated at New Haven, Connecticut, this 30th day of June, 1976.

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In the matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	)	In Proceedings for the Reorganization of a Railroad.
	)	No. 30226

NOTICE OF APPEAL

Notice is hereby given that the Interstate Commerce Commission hereby appeals to the United States Court of Appeals for the Second Circuit from the Opinion, Order and Judgment on applications, pursuant to §77(c)(12) of the Bankruptcy Act, for compensation and for reimbursement of expenses incurred on behalf of the bankrupt estate, and the order overruling and vacating report and orders of the Interstate Commerce Commission regarding interim compensation for indenture trustee and counsel entered in these proceedings on the 30th day of June, 1976.

July , 1976

ARTHUR J. CERRA
General Counsel

CHARLES H. WHITE
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BEST COPY AVAILABLE

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OFFICE OF
GENERAL COUNSEL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

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In the Matter of :

THE NEW YORK, NEW HAVEN & HARTFORD :
RAILROAD COMPANY,

: Bky. No. 30226

Debtor.

:

- - - - - - - - - - - - - - - - - - - -x

United States Court House
New Haven, Connecticut
April 14, 1976

B e f o r e:

Hon. ROBERT P. ANDERSON, U.S.C.J.

A p p e a r a n c e s:

Prof. JAMES MOORE
Counsel for Trustee
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MYRON S. ISAACS, Esq.
New York, N. Y.

THE COURT: I feel as if I wandered into a college reunion. Good morning.

PROF. MOORE: Good morning, your Honor.

May I suggest the course that the -- that I would like to see followed this morning?

THE COURT: Yes. I was just about to ask you what order you'd like to take these in. I didn't know that people from more distanct places might like -- or short things might like to get through.

PROF. MOORE: I'd like to present the petition for the settlement with the City of Boston first.

THE COURT: Yes.

PROF. MOORE: I think that can be done very quickly, although we shall put in a bit of evidence on that.

THE COURT: Very well.

PROF. MOORE: Then the Petition for Order No. 795 on the effect of RRRRA upon the jurisdiction of the Interstate Commerce Commission and this Court, I would like to take up next, and we shall present one, there, an order adjudging that the jurisdiction of the Commission, its rights and duties were divested completely as of February 5, 1975 -- or 1976 -- in relation to this railroad.

THE COURT: Yes.

PROF. MOORE: Then an order relative to authorization to take appropriate action, whatever action appropriate, to amend

the Supreme Court's judgment and that of the Second Circuit, if necessary, so that the plan which is now down before the Commission will come back to this Court.

Then I would like to take up half a dozen fee petitions of counsel for the Trustee that have handled tort claims and other claims.

THE COURT: Yes, that's one of the things I had in mind. One of those could be disposed of quite quickly.

PROF. MOORE: Well, I hope so, your Honor. It looks as though they're not giving away the crown jewels, but actually the aggregate is approximately twenty-nine thousand.

THE COURT: That's all. These are things that a law department of a railroad in the ordinary course of operating a railroad would take care of, distinct from reorganization and trustee's counsel and that sort of thing.

PROF. MOORE: But they will illustrate points of view that we have that are contra to the point of view set forth in the letter by Mr. Israel, in which your Honor, I believe, has received.

THE COURT: Yes.

PROF. MOORE: Then after those routine fee petitions, we only -- well, in regard to those, we have a very general order that ends up essentially like this: "Petition so filed shall contain such detail and be supported by such supplementary documentation as may reasonably be deemed appropriate in light

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of the nature of the petition. That's -- what we think that would mean would be illustrated by these routine fee petitions of Cooney and Scully, Geoghan and Tutrone and so on.

THE COURT: Yes.

PROF. MOORE: And then -- and I shouldn't think that would take too long, depending, of course, on the position of the Interstate Commerce Commission, which I understand is represented here this morning, and then turn the matter over to counsel for the bondholders and so forth.

THE COURT: Very well. That seems like a feasible program. We'll take up first, then, the taxes due the City of Boston.

PROF. MOORE: I'd like to call Mr. Smith, please.

R I C H A R D J O Y C E S M I T H, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name and address for the record, please.

THE WITNESS: Richard Joyce Smith. 139 Main Street, Southport, Connecticut.

DIRECT EXAMINATION

BY PROF. MOORE:

PROF. MOORE: Before we start the formal testimony, I would like to hand up an affidavit giving notice of hearing on this petition, ask the Court to find due and adequate notice has been given.

THE COURT: Very well. I'll find that notice has been given in accordance with the order of notice in the Petition for Order No. 794.

PROF. MOORE: Thank you, sir.

Q Mr. Smith, what connection do you have with this proceeding of the New York, New Haven and Hartford Railroad Company?

A I am the Trustee appointed by the Court for the Debtor in Reorganization.

Q You have been Trustee since when?

Since August, 1961.

Did you authorize the filing of this subject Petition

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for Order No. 794?

A. I did.

Q. Now, paragraph one of that petition refers to an earlier settlement of real estate taxes and related assessments against the debtor and also the B&P, but I think we'll put that aside.

Would you just review that settlement and then what happened to it subsequently?

A. Well, in connection with several other matters at the time I negotiated through my counsel a settlement with the City of Boston for the payment of taxes due it by the Estate in late 1961, whereby they agreed in full liquidation of their claim to accept four million, five hundred and five odd thousand dollars in cash, which was to pay to 1970, and an additional three million, six hundred and forty-eight thousand, eight hundred odd dollars in three equal annual installments, or a total of eight million, one hundred and fifty-four, three seventeen.

The overall amount settled by those payments was three million -- thirteen million, thirty-four odd thousand dollars.

There was a hearing on this matter before this Court held in December, 1969, and that resulted in the Court's issuing its Order No. 596 approving -- approving the settlement.

Q. Was there any direct opposition?

A. No. I have reviewed the transcript of that hearing, which I have here, I was cross examined by various creditors'

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interests, but there was no direct opposition, and the Court so found.

PROF. MOORE: Your Honor, the figures that Mr. Smith has testified to appear in the statement of assets, liabilities, capital deficites, close of operation for February, 1976. That's the last statement filed. It's been circulated to counsel.

Q Did this settlement abort, and if so, why?

A Well, it abort -- it -- I don't know whether it actually aborted, but after we had paid four million, five hundred and five thousand in cash, before the remainder of the payments under the settlement became due, the Penn Central Transportation Company, or the then Penn Central Company, became bankrupt and passed its dividends on the common stock we held and ceased paying interest on the bonds we held, so we had no cash, and I came to the Court and asked for a moratorium on payment of all claims of this kind, settled or otherwise, and the Court issued such an order declaring the moratorium.

Q What is the proposal that you and the City of Boston have reached subject to approval of this Court?

A We have -- we have reached an agreement whereby in full settlement of the balance due under their tax claim against the Estate they will accept a single payment of $1,617,953.75. That would be in full and final settlement.

Q How did you arrive at that?

A Well, I think I testified at the court -- at the hearing we held last -- late last year that we would endeavor to negotiate a settlement with the City of Boston, on the same basis that we had -- upon which we had reached a partial settlement with the United States of America on the payment of the amounts due under the trustee's certificates. And that was roughly taking present worth of the -- of the amount still due under the Boston claim of a payment ten years hence of three installments, discounted at the rate of 8.3 percent compounded semiannually.

Q How much cash or cash equivalents do you presently have on hand?

A We have on hand in the Trustee Estate twenty-one -- in cash or equivalents, $21,166,776.

Q And you would have approximately how much after making this payment under the settlement, if approved by the Court?

A We would have after -- this settlement was approved by the Court -- and we would have 21,166,776, less the amount of the settlement, which is one million six, but there are other things -- should be taken into account, because we have other accrued liabilities that will come due in the course of this year, and I estimate that after the payment of this tax claim, and assuming that we carry out the payment of all our accrued liabilities, that we will have available $18,733,073.

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Q Those figures appear of record, do they not?

A Not the one I've just given you. They can be derived.

Q They're not materially different, though, than the figures that appear in the earlier statement of assets and liabilities?

A Well, no, except for the deduction of the one million, six seventeen.

Q Do you consider the proposed settlement a -- beneficial to the Estate?

A I do.

PROF. MOORE: I tender the witness for cross examination.

THE COURT: Anybody wish to inquire?

If not, you may step down, Mr. Smith.

THE WITNESS: Thank you.

(Witness excused.)

PROF. MOORE: That concludes our testimony.

THE COUPT: All right.

PROF. MOORE: We do have, however, our treasurer and our comptroller here, and we can put them on the stand if anyone wishes to go into the finances in more detail.

THE COURT: I take it no one does, so we could -- did you have anything more that you wanted to offer up by way of evidence on this petition?

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PROF. MOORE: Not on the City of Boston.

THE COURT: All right.

PROF. MOORE: Hand up the order authorizing the settlement of the claim.

THE COURT: Anybody want to be heard or have any comment on the City of Boston settlement?

PROF. MOORE: I should say one thing, your Honor. It's been implicit in this the State Tax Commissioner of Massachusetts has approved it. So you're not approving a hypothetical settlement. It's a real settlement.

THE COURT: Very well. Well, it appears no one wishes to be heard further on this matter, and the petition -- sworn petitions -- and I find its preparations and -- are true that the petition should be granted. And have here a form of order which may issue forthwith.

PROF. MOORE: Your Honor, the next petition would be the one that I referred to for an order adjudicating, among other things, that all the rights, powers and duties of the Interstate Commerce Commission under Section 77 vested as of February 5 of this year in this Court.

THE COURT: Including privileges and immunities, as Professor Hawthorne would say?

PROF. MOORE: I never got --

THE COURT: Whatever they are.

PROF. MOORE: We have no testimony on this. We think

it is pure and simple a -

THE COURT: A legal question?

PROF. MOORE: -- a legal question. We filed a memorandum.

THE COURT: Yes.

PROF. MOORE: I'll be glad to try and answer any questions, but --

THE COURT: Very well. I think you said the ICC counsel is here.

PROF. MOORE: Perhaps counsel for the Commission would prefer to go forward. He's been furnished with a copy of our memo.

THE COURT: All right. Want to identify yourself?

MR. WHITE: Yes, your Honor. My name is Charles White, Associate General Counsel of the ICC.

THE COURT: That's --

MR. WHITE: White.

THE COURT: -- W-h-i-t-e?

MR. WHITE: Yes, your Honor.

May it please the Court, the Commission concurs in Professor Moore's analysis of the effect of the RRRR Act.

I'd like briefly to comment on it informal --

THE COURT: By that you are referring --

MR. WHITE: To the vesting of the jurisdiction in this Court as of February 5th.

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THE COURT: This is a petition and a brief or a memorandum in support of Petition for Order No. 75 -- 795, and I take it that's what you are --

MR. WHITE: Yes, your Honor, that's precisely it.

THE COURT: Go ahead.

MR. WHITE: I want to address myself briefly to the informal letter that the Director of the Section of Finance furnished the Clerk of this Court, indeed, the clerks of all the courts overseeing the reoganization process of different railroads in bankruptcy.

He concluded his letter with a statement that the Commission viewed the compensation aspects of the RRRR Act to have prospective application only --

THE COURT: Yes, I read that. Of course, I had that and I wondered about that.

MR. WHITE: Yes, your Honor. I understand part of the reason we're here today is to examine procedures for you in the future to look at the compensation questions that will be brought to this Court in the future, and I would like to take the language that Mr. Israel used in the last part of his letter and make the Commission process available to you for those petitions for compensation outstanding, not acted on, before the February 5th date.

THE COURT: Right.

MR. WHITE: The Commission, I think, has an expertise

in the compensation matter, has a mechanism in place, and wants to make that available to your Honor.

THE COURT: They come in now as a friend of the Court on that?

MR. WHITE: On this matter, yes, your Honor.

THE COURT: What about applications for reopening or rehearing and things of that sort?

MR. WHITE: I believe --

THE COURT: I mean things that weren't adjudicated prior to the effective date of the Act?

MR. WHITE: I believe that any final order that was appealable but not appealed before February 5th stands on its own two feet in terms of subsequent review by this Court, as to any other matter which was appealable but not appealed, reverts to this Court's exclusive jurisdiction as of February 5th.

I'm thinking specifically about a matter in which there apparently was a compensation order appealed before the February 5th date, but the matter was stayed before your Honor. It is our position that that kind of an order that was administratively final and subject to judicial review before the 5th still stands and still is subject to review as an order of the Commission.

THE COURT: In other words, reorganization court sits as a court in review?

MR. WHITE: In review of that order.

THE COURT: Of the order of the ICC, still an effective order, but if such an order has not been issued, then it more or less comes to de novo before this Court?

MR. WHITE: Exactly, your Honor. It's a standard of what procedures you'll follow, and our view is that that would be a review procedure and not a de novo procedure, so to sum up, I am in concurrence with the Trustee's position, this Court does have jurisdiction as of February 5th, and the agency stands anxious to provide this Court with the mechanism in place as to the compensation questions pending on the 5th.

THE COURT: Thank you.

MR. WHITE: Thank you, your Honor.

THE COURT: Anybody else like to be heard?

PROF. MOORE: Your Honor, I'm flatly opposed to the position espoused by counsel. The statute is clear that the jurisdiction of the Commission shall terminate as of February 5 and all of its power and duties then vested in this Court.

Now, that isn't unusual. Oftentimes jurisdiction is retained in the statute, or it may be applied prospectively if the statute would so indicate, but I do not read the statute as that, and as the Court will remember ex parte McCardle is very clear that even the Supreme Court's appellate jurisdiction can be taken away from it while the case, the very case, is pending before the court, it's been argued. The only jurisdiction that I know that cannot be impaired, cannot be taken away with -- by

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Congress is that of the original jurisdiction of the Supreme Court -- can neither be taken away nor enlarged, and, yet, the Supreme Court has sustained the granting of concurrent jurisdiction, but this is not a new concept that Congress used, and some of our petitions raise these matters very flatly.

Our brief also discusses another case running along the same lines that I'm talking about. The Tutrone case would present the problem head on. This Court transmitted a petition to the Commission back in -- that covered compensation in '74.

Now, that petition has never been acted on by the ICC. Then, later on, a petition was sent down and -- for a later period, and the Commission allowed that partially, departed in part from its prior precedent in that there could be no billable time for the preparation of Commission -- or preparation of petition -- disallowed a telephone bill of a dollar and twenty cents because not adequately documented in some months.

Now, we're faced with something more than theory. I think theory supports us, but we're also faced with the practicality that we've been able to keep Tutrone, who is a good trial lawyer, as representing us in New York. You have to have local counsel. He's done a good job, but he is certainly becoming sullen, if not mutinous. I've been down to encourage him to hold on a little.

And on the expertise point, I cannot follow the Commission on that. I don't know what particular expertise the

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Commission has in determining how much a personal injury lawyer should receive in New York, Connecticut, Rhode Island, Massachusetts. It will vary. The overheads vary tremendously, and the fees that are charged.

Mr. Smith negotiated, I think, a very low figure with Tutrone, $60 an hour in New York, which is pretty low, it seems to me.

Now, the grant of all these petitions that we now have before you, all of them like -- not all, but most of them would run directly counter to what my friend has said.

THE COURT: There's no legislative history on that. I think you mentioned that in the brief.

PROF. MOORE: We couldn't find that.

THE COURT: You couldn't find anything?

PROF. MOORE: And I see nothing in that section that says part of the jurisdiction of the Commission shall be continuing, but the other shall terminate.

If you followed that literally, the plan would still stay down there.

THE COURT: Yes. Well, this is a plenary cessation of jurisdiction or removal from the Commission and transfer of it to the Court.

PROF. MOORE: Well, that's the way we view it. Now, you take Gratz, Tate. They have two petitions before this Court --

THE COURT: By the way, Tutrone has two, you know.

PROF. MOORE: Yes, sir.

THE COURT: One is a new one, and it doesn't really involve the Commission, I take it, then?

PROF. MOORE: Well, yes. Yes, it does, your Honor.

THE COURT: Oh, it does?

PROF. MOORE: Well, the last one does not. You are correct.

THE COURT: The March 18th -- no, wait a minute.

PROF. MOORE: Yes. You are quite right there. But the other two do.

THE COURT: The others do.

PROF. MOORE: The first one he has -- the Commission hasn't acted on his petition that went down there in '74.

THE COURT: Well, where there's been no action, certainly can't be any question about the Court?

PROF. MOORE: Now, where there has been action, that doesn't trouble me, either. Where the matter could be reviewed by this Court. Because it won't do, in my opinion, to say that a Court can have jurisdiction to affirm an order of a lower courtor a commission, but it can't reverse it.

THE COURT: We never recognize any such rule as that in this court.

PROF. MOORE: Suppose you reverse the Commission? What's it to do? Under the Act, it has no jurisdiction.

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THE COURT: No. So we have to do it ourselves.

PROF. MOORE: That's our position, your Honor.

THE COURT: Well, that seems a logical position.

PROF. MOORE: I would like to put in the affidavits of service in all these cases and hand up orders granting them, and if your Honor is prepared tosign them, then, fine.

THE COURT: These are all sworn petitions?

PROF. MOORE: They're all sworn.

THE COURT: And as I went over them, they seemed to me -- I am, of course, entirely familiar with the nature of the work they've done, and it does seem to me that they were proper charges.

I am a little curious, though, Mr. White, about that denial in the Tutrone case where it always included the work on the -- making up and filing the petition itself, and all of a sudden they disallowed it. Was that a sudden change in policy, or somebody didn't feel well one morning, or what?

MR. WHITE: I can't answer that, your Honor. I'm not personally familiar with what the status in that case is.

THE COURT: Are you as puzzled as I am about that?

MR. WHITE: I am puzzled about that. It does seem to be a departure from past practices.

THE COURT: Well, never mind. I guess that's water over the dam.

PROF. MOORE: On these tort cases, before I overlook

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the point, your Honor, I believe that this Court and counsel are better prepared to pass upon their bills than almost anybody, for the simple reason that relative to Cooney and Scully, Geoghan, Tutrone, Grossman, I receive reports every month as to what cases they've handled, and in between time, Mr. Smith or myself or someone else will get a call or two calls, "What can we settle this case for? What's the total and so on?" And every month we get a report as to what cases have been settled and what ones there are and so on.

And the fees, as I say, of Tutrone are most reasonable, and that of Cooney and Scully have been of the same style, a minimum style.

THE COURT: Yes. They've always followed the minimum fee standard, I think, that -- for Hartford County.

PROF. MOORE: Now, Gratz, Tate, for instance, are local counsel, which we have to have in Philadelphia. We certainly are familiar with what they do.

THE COURT: Yes, they certainly have been very busy. No doubt about that.

PROF. MOORE: I sometimes dream at night of being covered over completely with paper, the amount of -- volume of paper that comes up to us from Philadelphia through Gratz, Tate, and they make local appearances for us when the matter's in regard to acquiring additional counsel. So it seems we're thoroughly familiar with what Gratz and Tate are doing.

Then you go down to Kramer. That was just a one-shot deal on a tax matter.

THE COURT: They gave advice. Has that ever been terminated, that issue? The tax question?

PROF. MOORE: Well, this was a new tax question.

THE COURT: I know it. I didn't know it had been resolved.

PROF. MOORE: Well, I don't know whether -- if it goes to court, whether it will be resolved or not.

THE COURT: But they finished their work on it?

PROF. MOORE: They finished their work -- given us their opinion and so on, upon which we're relying.

One of the Gratz, Tate petitions would present no problem whichever way you looked at it, in the sense that the Commission allowed one petition in full. But it seems to me since this Court has not passed upon it by February 5th, that the jurisdiction is in this Court to find that that sum is fair and reasonable, irrespective of what the Commission found. Although, you may take that into consideration, of course.

Their second petition is for compensation for work done before February 5, but the petition was filed after February 5. I'll hand up an affidavit giving notice of hearing on the Petition 790, and also the rescheduled hearing, and ask the Court to find that due and adequate notice has been given, both as to the original hearing and the rescheduled hearing.

THE COURT: Very well. I'll find that notice has been given in accordance with the orders of notice in Petition for Order 790 and 796.

PROF. MOORE: And I'll hand up to the Court the order granting the petition for such action as the Court thinks proper.

THE COURT: Perhaps at this point I might ask if anyone has anything to say in general about these petitions for compensation that have been filed by counsel who have participated in performing duties that would normally be performed by legal department of the railroad?

MR. IANNOTTI: If I may, your Honor --

THE COURT: All right.

MR. IANNOTTI: -- and perhaps this is inappropriate, but I'm not quite certain how --

THE COURT: Well, this is exclusive of indentured trustees and counsel for creditors' committees and so forth -- bondholders' committee, and so --

MR. IANNOTTI: Perhaps I should defer my remarks, but I did -- to the extent that what is ordered here with respect to these counsel may affect procedures of counsel for indentured trustees and indentured trustees, I did want to be heard, but I would defer, then, until a later time if that's all right.

THE COURT: Your rights will be reserved.

MR. IANNOTTI: Thank you, your Honor.

PROF. MOORE: I have an affidavit of giving notice of

hearing on the second petition of Gratz and Tate for Order No. 791, and ask the Court to grant -- or to hold that due and adequate notice has been given, and I will hand up --

THE COURT: The order --

PROF. MOORE: -- the original order.

THE COURT: 790, that was?

THE CLERK: Yes, your Honor.

THE COURT: -- and find that the order of notice of this Court has been complied with relative to Petition for Order 791.

PROF. MOORE: Now, I come to Cooney and Scully.

THE COURT: First, I will find that the petition of Gratz, Tate, et cetera, relative to Order No. 791, is proper and correct and that it may issue accordingly.

PROF. MOORE: What about 790, your Honor?

THE COURT: I've done that.

PROF. MOORE: Oh, you've done that?

THE COURT: This is Cooney, Scully and Dowling?

PROF. MOORE: The Court has already received an affidavit of mailing with notice of the rescheduled hearing in connection with 790, that also includes this petition, and I believe the Court has found that due and adequate notice has been given in relation to Cooney and Scully, and I hand up --

THE COURT: Yes.

PROF. MOORE: -- the order.

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THE COURT: Very well.

PROF. MOORE: Now, in Cooney and Scully, matters were transmitted down to the Commission, they've never -- they were never acted upon at the time of February 5, and so Cooney and Scully then filed a brief petition covering the matters formerly referred and asking those details of the petitions be considered. They're on file in this court, your Honor.

THE COURT: All right. Very well. Ask if anyone wants to be heard on any one of these petitions? Just speak up.

I see and hear no one does, and I will find that the petition of Cooney, Scully and Dowling is correct and proper and the order ordering compensation requested is approved and issued forthwith.

PROF. MOORE: I hand up the affidavit giving notice of hearing on Petitions for Orders No. 797 and 798 in relation to --

THE COURT: Those are Tutrone?

PROF. MOORE: Geoghan and Tutrone.

THE COURT: That's right.

PROF. MOORE: -- and ask that due and adequate -- ask the Court to hold that due and adequate notice has been given.

THE COURT: Very well. I find that notice has been given in accordance with the orders of notice relating to Petitions for Orders 797 and 798. You have here a sworn petition, I am relatively familiar with the services performed.

And I hear no objection.

I find that they were proper and reasonable -- for payment may issue forthwith.

PROF. MOORE: Here is Geoghan and Tutrone's, an order for payment of their last petition.

THE COURT: 798?

PROF. MOORE: 798.

THE COURT: Well, likewise, I find that --

PROF. MOORE: Kramer, on the tax matter, I hand up an affidavit of giving notice and ask the Court to find that due and adequate notice has been given.

THE COURT: All right.

PROF. MOORE: And this -- and also an order for payment --

THE COURT: As to Order No. 798, I find that due and adequate notice has been given, and that the sworn petition properly sets forth statement of compensation which the Court feels to be reasonable for the services rendered and order that the compensation sought and the expenses, reimbursement of expenses, likewise be ordered. Order may issue accordingly.

PROF. MOORE: Now, your Honor --

THE COURT: I haven't done Kramer yet. I find that notice was given in accordance with the order of notice relative to the Petition of Arthur B. Kramer, Esquire, and there again we have a sworn petition, and the Court is generally familiar

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with the single tax question that was referred to that New York counsel and the services he rendered in connection with it. I find that the compensation sought is reasonable and proper, and accordingly, the order for the payment may issue.

PROF. MOORE: Now, as I say, it sounds like we're giving away all the treasury, but actually all of those together amount to only $28,981.20.

Now, your Honor, let's go back to the petition for this Court's powers, and I will hand up the affidavit of giving notice as to that. Affidavit giving the notice and also a supplemental affidavit.

Now, this may seem as in reverse order, but, actually, the petitions that this Court has considered after hearing a brief legal argument supports exactly what we're asking the Court to do. This is -- first order is Order No. 795, that this Court is vested as of February 5, 1976, with all the powers and duties of the Commission under Section 77.

Then we thought it better if we had separate orders to deal with this Court's jurisdiction, and then a different order regarding the petition of the Trustee for authority to seek amendment of mandates of the Supreme Court and the Court of Appeals for the Second Circuit.

THE COURT: Yes.

PROF. MOORE: I'll hand that up.

Now, the last order, your Honor, which seems to have

flown away on me, but -- oh. I think I handed it up.

The last order was, in effect, that petitions for compensation, whether they be 77(c)(2) or 77(c)(12), come, of course, to this Court, and you have already held that.

THE COURT: Yes.

PROF. MOORE: And it is drawn in very general language that the petitions should have such supporting detail as the circumstances of the case warrant. There's no point in making a constitutional case out of a Cooney and Scully petition for five or six hundred dollars, and so on, and I think we can properly go back -- or follow as to these routine petitions of counsel for the Trustee with a minimum of detail, unless the Court would wish more, because about all a lawyer has to sell is time and judgment, and I don't see much point of the Estate paying for the lawyer spending a good deal of time assembling a lot of detail on a matter that the Court knows all about, and when the amount is quite small, as in these tort cases.

I thought that at this point it would be appropriate if the distinguished counselor here would inform the Court what procedures they want relative to their petitions.

I think they're in quite a different situation. The Trustee is willing to file his statement in writing in relation to their petitions, and the Court may then want to give them time to reply. But I think it's been a little officious of us to try to tell the or the Court whether, for instance, they

want to submit expert testimony or additional testimony or have a master or so on, so we did not attempt to draw any order in detail as to that matter.

THE COURT: Well, I'll first take up the matter of notice relating to the Petition for Order 795 and find that notice has been given in accordance with the order, and as far as the claims of -- we've already really covered and orders have issued on Tutrone and Kramer, Gratz, Tate, et cetera, and also Messrs. Cooney, Scully and Dowling. I'm quite sure that reference to your previous comment that neither -- or none of those three gentlemen, Mr. Cooney, Scully or Dowling, ever aspired to become a constitutional issue, and I don't think that we're really confronted with such a problem with respect to their petition, and insofar as establishing the procedure: that is, the order in connection with No. 795, which is implementation of the petition and in line with it, the Court approves that and the order may issue accordingly.

Now, there are matters that have arisen out of the New Haven conclusion cases and like matters, so that it is necessary that motions for -- be filed, perhaps, with the Supreme Court and the Court of Appeals for the Second Circuit, which is also a part of Petition for Order 795, and that, too, is approved and may issue.

Now, with regard to -- I better return some of these to you so you can keep them in order.

Now, there remain the applications by indentured trustees and counsel for the bondholders' committee and classification peculiarly related to the reorganization proceedings.

Now, I guess initially the thought was that those would be heard today, but it seemed to me that a little more time should be allowed and, further, the Court would like to have an opportunity, and in open court, to have counsel speak and say what times hearings might be put down on each of those matters.

Now, it may be that some of them could be heard on the same day, it may be we'll have to designate two or three days for them. But at this time, I would say that there are petitions, of course, pending here now, and it might be that each of them might state briefly whatever suggestions they might have for procedure in connection with your own petition. Some of them which Mr. Iannotti spoke a moment ago, and I know that -- believe in his case a petition which I had ordered sent down to the Interstate Commerce Commission after a passage of some time was returned with no compensation at all provided.

Well, that has been a source of some concern to me, because, of course, the Court has to appoint an indentured trustee and it is a necessary part of the proceedings, and an action of that sort by the Commission, of course, would simply tend to obfuscate and block the functioning of the reorganization. Because the Court can hardly be expected to request somebody to act as a trustee with no expectation or possibility

of compensation.

So there are factors of that sort and what petitions should be filed. I mean, I believe in that particular case, alternative petitions have been filed, and I take it from -- Mr. Iannotti mentioned that, but I notice Mr. -- or Professor Moore mentions the possibility, of course, that if it were the desire of counsel of the petitioners to have a special master, rather than to have it heard by the Court, that's a possibility, or as far as I'm concerned, I'm -- be available to hear them if they wish to have them heard by the Court.

And then there's a matter of any experts if any one of you planned to or wish to present experts on the subject, perhaps the Court ought to have some advance notice of that, and the Trustee and counsel should have some notice of it. And anything else perhaps that may occur to the parties involved.

Now, I think Mr. McAfee is here and he is also presented -- claim, and again in the case of the first trustee --indentured trustee for the first series of bonds, of course, can fix a date for that and perhaps that's a -- logically, the first one to take up.

MR. McAFEE: Well, that's for Mr. Bader to speak.

THE COURT: Either you or Mr. Bader would like to hold forth on the subject, I'll be glad to hear you.

MR. BADER: Your Honor, my name is Bader.

I think all the counsel for the bondholder interests,

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the indentured trustees, as well as the committee, have reached some consensus as to a procedure that they'd like to recommend, and I think basically -- and I speak subject to correction -- I think basically it is a proposal that we sort of take our time in crossing bridges.

THE COURT: Yes.

MR. BADER: I think the first question is -- as your Honor knows, the petitions have been filed, they were filed initially under the procedure required by the ICC where they simply came to you for transmission.

Subsequently, petitions have been filed, I believe, by all counsel here present to have those filings deemed to be petitions to this Court under the procedure established by the amendment of February 5, '76.

THE COURT: I'm not sure, but to indicate it is possible additional motions have been made to this Court with respect to it,now I'm not -- by that I'm not attempting to say that it is necessary, not in all cases, certainly.

MR. BADER: I would hope, your Honor, that it would be agreed by counsel for the Trustee and any other interested parties that the application was -- the application which was submitted to your Honor by us, among others, without any return date, simply to have those -- that -- the original applications treated now as applications to your Honor for fee allowances would be -- would be an accepted procedure, and we wouldn't

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need -- frankly, as your Honor knows, the duplicating of paper involved in having to refile and resubmit that seems to me incredible.

THE COURT: That's true, and we'd like to keep that to a minimum, of course. Offhand, I would say in your case there'd be no need of filing any additional -- no ruling whatever made on yours?

MR. BADER: None at all, your Honor.

THE COURT: None at all?

MR. BADER: There was a ruling saying there would be a modified procedure in the Interstate Commerce Commission which seems to me to be an irrelevancy.

THE COURT: They're not aware at that time that it would be modified even further?

MR. BADER: Yes. I think the next step that seems logical, as Professor Moore suggested, is that a date be set agreeable to the Trustee, the review trustee, for the filing of any opposition papers, and it seems to me that until we get those papers, some of the questions that may be further down the road don't arise.

For instance, I can conceive of a set of circumstances where because of the position taken by the Trustee, we might need to have an expert and -- for instance, the issue of the services of a corporate trustee.

I can also conceive of a situation where because of

the position taken by the Trustee that issue might never arise, and there might be no need for such expert testimony, let your Honor himself decide it if he wanted.

I think similarly, to some extent, it would depend upon how many factual questions were raised, whether or not a reference to a master would be advisable, either in your opinion or in ours, and I would suggest to your Honor that we sort of take them step by step, let's agree on a date for opposition papers, I would like to reserve a right to reply to those papers, and we can work out a date for that; and in connection with that reply, I think, your Honor, proposals could be made as to subsequent procedures, whether it be here before this Court, whether -- at which we present witnesses or we don't present witnesses and so forth.

THE COURT: Why? I might ask Professor Moore what you think of that position? I mean have you some counterproposal or didn't you intend to file anything more than you have?

PROF. MOORE: No. Ithink that we will. At least it is our general feeling now.

THE COURT: To answer the petition?

PROF. MOORE: We should file some kind of a formal statement of position.

THE COURT: Now, you mean generally applying to all of these, or to each one of the petitioners?

PROF. MOORE: It depends. WE won't file any more

statements than necessary, but a lawyer's idea of necessary is sometimes a peculiar one, and it may clarify matters if we file a statement in relation to each petitioner.

THE COURT: Offhand, there again, I think that might be the more orderly way to do it. Because we'd take each one of them up at a time, and it would be like having a set of pleadings, have them directed to the case that's before the Court, and I would prefer that, of course, it should be short in each case.

PROF. MOORE: And then perhaps each petitioner could file a short reply.

THE COURT: Right.

PROF. MOORE: So we point up the issues, what the issues, if any, are.

MR. BADER: Is Professor Moore prepared to talk dates?

THE COURT: Well, I was about to ask that. I've been seeing this coming some time, and I have tried to arrange my schedule so that I would be, well, in a -- more or less a position to hold some hearings on these things. I have some opinions to write left over from the sittings in New York, but otherwise, I'm trying to keep a space open, and I think that --

MR. BADER: Your Honor, before we go much further down this road, I suggest the other petitioners -- seem to be dealing with counsel locally. Maybe for other counsel who for

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the moment might be on my side of the fence, might like to be heard, they may have a different view of the proposals before you. Mr. Iannotti's situation is obviously different, because he's been mishandled by the Commission for a longer while than anybody else.

MR. IANNOTTI: Bloody, but unbowed, your Honor.

THE COURT: That's it.

MR. IANNOTTI: May it please the Court, I'm Lawrence Iannotti, successor indentured trustee under the debtors' first and refunding mortgage, and I trust that I don't appear sullen, and I know that your Honor, in view of my former training, recognizes I would not likely resort to mutiny. Nonetheless, I am concerned about my compensation, which is otherwise --

THE COURT: Well, you know from my prior experience, I might deal with it harshly and summarily.

MR. IANNOTTI: Yes, I do, indeed.

I do think my position is different from the position of those, of course, for whom Mr. Bader spoke. But before I offer my position, I'd like to clarify, if I may, what I understand has transpired thus far today with respect to petitions for compensation.

If I understand it, your Honor has ruled that petitions for compendsation will be determined by this Court and will not depend upon any Interstate Commerce Commission action or intervention?

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THE COURT: That's correct, yes.

MR. IANNOTTI: And Mr. White had referred to one matter as to which an appeal was pending. He did not name the matter. I assume that he's referring to the one in which I am involved, and I certainly wouldn't presume to add to the exposition of the law that Professor Moore offered to this Court, but on a practical basis, I think that question may also be mooted inasmuch as the appeal was stayed, and I have resubmitted to this Court, based upon the RRRRA. So if my understanding is correct, that my petition will go forward before this Court with no further Commission intervention.

THE COURT: As to anything that Mr. White offered, I take it it was -- any material or basic stuff, and as I described him, he now appears a friend of the Court.

MR. IANNOTTI: And I take it he's offered to make the Commission's mechanism available to the Court, and I would respectfully and gratefully decline.

THE COURT: I don't think finding a matter of -- making findings on that sort of thing, but I take it what he was offering was, oh, possible expertise if there's some difficult problems and what not.

MR. IANNOTTI: Yes, your Honor. On that basis, I would submit to your Honor that whatever procedure may be decreed with respect to former indentured trustees and their counsel or counsel for bondholders' committee and the like, that

my petitions really should be heard -- should be determined by this Court as soon as possible with no intervention by a commission or a master.

I would submit further that there's no need for expert testimony with respect to my petition. My petition, I submit, is not unlike the petitions your Honor ruled upon earlier this morning with respect to Cooney, Dowling and Scully and Geoghan and Tutrone. I think we ought not to make a constitutional case out of my petition

THE COURT: You don't want to be one.

MR. IANNOTTI: -- either. You know, I'd certainly be pleased some day to see my name in the Supreme Court reports, but not in this context.

I submit, your Honor, that I was appointed by this Court, that most of the work done by me is known directly to this Court. It doesn't require the same analysis that might be required where there was an operating railroad.

I submit further that my petition has been filed for a substantial amount of time. That the initial petition filed with the Commission was subject to no negative responses from any of the parties. That my petition, as modified, was scheduled for hearing today and all parties given notice of that by the Clerk of the Court, and there were no negative responses to it.

I suggest that time has passed within which any party could respond to my petition, and I would, therefore, respectfully

suggest, your Honor, that you can pass upon my petition based upon the papers which are on file with this Court, as described in my modification of my Petition for Order No. 879, and that we can rest upon those peititions unless your Honor has some specific questions as to which he would like further information or additional testimony.

THE COURT: No. But I'm not sure that everyone would be barred at this time in filing briefs or arguments and position -- statements of position, if they have any. I don't know that anybody has any.

MR. IANNOTTI: Well, it seems to me, your Honor, that it would come rather late when the initial petition went through the entire Commission procedure with no formal response to it --

THE COURT: Yes.

MR. IANNOTTI: -- whatsoever. The second petition did have a response by Mr. Smith, and that response is on file with the Court. The petition, as modified, was scheduled for hearing today, it was calendared for hearing today, and no one filed any further papers.

I submit I don't mean to be contentious, that's my submission to your Honor, and I think --

THE COURT: Right.

MR. IANNOTTI: -- in terms of economy and of cost to the Estate and in fairness to those who were appointed as successor trustees, that that would be a sensible way in which to handle

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our petitions, regardless of how petitions for others may be handled.

THE COURT: Very well.

MR. IANNOTTI: Thank you, your Honor.

PROF. MOORE: Your Honor, I had thought that Mr. Iannotti's petition on the merits was to go over, and I don't know what position my client wants to take.

THE COURT: Well, it will go over. I'm not going to hear it today. All of these are put over. I think in Mr. Iannotti's case the order of notice issues, and I guess you gave the notice.

MR. IANNOTTI: There was notice, yes, your Honor, and as much as I would --

THE COURT: But as far as hearing the thing, getting down to the merits of it, I'm not -- I'll have to postpone it.

MR. IANNOTTI: I understand that.

THE COURT: I want to think of the order in which it should go. There might be some merit in perhaps hearing your predecessor first.

Now, I realize as far as the equities go, you've had a long, tough haul with the Commission and so forth, but there is possibly some virtue in having the indentured trustees for the first series given more or less continuous presentation, you see.

MR. IANNOTTI: I recognize the appearance of the

desirability of such a proceeding, your Honor, but I would submit that while I didn't really expect that your Honor would pass on the petition today, I did take the initiative in submitting petitions for compensation.

The former trustee, with all due respect -- and I am honored to be in their company -- have ten or eleven years worth of work as to which they're petitioning this Court, and I think it would not be particular equitable to have to wait upon them if those procedures are going to take any substantial length of time.

THE COURT: It isn't a matter of determining, but simply perhaps hearing it, you see, and then hear you right after.

MR. IANNOTTI: Well, your Honor, I defer to what your Honor wishes to do, but I do submit as to the petitions presently before the Court, not the future petitions, necessarily, but I do think as to the petitions before the Court, there's little need, if any, for additional documentation or even response. I think that it would not sit well with those who sat by idly when I was before the Commission who could now come in and take a negative approach.

Thank you.

PROF. MOORE: Your Honor, I would like to have a short time within which to consult with my client and see whether or not we want to file a statement of position. That

won't hold things up very much.

THE COURT: Well, I'm -- things are -- I will not be able to put down a hearing until, say, the -- 6th or 7th of May, and then three days of thenext week, 10th, 11th and 12th.

Mr. Bader, what is your position? I mean, as far as -- as you say, you want to take it one step at a time, which I think has some merit to it, but what about time for filing statements and so forth?

MR. BADER: Your Honor, I believe the material that was filed with the Court -- I don't even remember when now, but some while ago it went down to the Commission -- constitutes a presentation of our position that makes out a prima facie case for the relief we're asking for. It may be that -- that I missed something that perhaps Professor Moore and his client are going to point out to me, but my position basically is that the next step -- and it ought to happen as soon as humanly possible so we can get on with this procedure -- is for the Trustee to come forward and tell his story as to what points, if any, he wishes to contest.

THE COURT: Then you want a little time to answer that?

MR. BADER: I want to reserve time to reply to it, yes, your Honor. But I was hoping what I would hear from the Trustee is some date by which he thought his response could be given, because I must say I think the equities in Mr. Iannotti's --

THE COURT: You had something more to add, you see,

that you are going to put in first, I understand, of course, you don't know, of course, we have liberal rules about them, and if you suddenly got solid gold evidence somewhere, and you wanted to put in something, I guess an opportunity would be afforded.

But anyway, the immediate thing is that the Trustee's statement of position should come in.

MR. BADER: I think so.

THE COURT: Then you will need some time after that?

MR. BADER: Yes.

THE COURT: First, we want to see how much tim ehe wants.

MR. BADER: And I must say I think the equities of Mr. Iannotti's situation, Mr. Zeldes, as well, wo ld command that that response be pretty quick if they're going to have to wait until after a hearing on my application.

THE COURT: Well, I'm not necessarily -- mean to wait until after the whole hearing, but at least we will get the papers all straightened out.

MR. BADER: I don't think it's a secret, your Honor, that counsel present here have all been involved in discussions of this matter. I was hopeful that we might have an answer as to a specific time.

THE COURT: Could you say generally, Professor Moore, what you'd like for time on filing a statement?

PROF. MOORE: Well, in reference to Mr. Iannotti, we

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can do that, I think, probably much quicker, 6th or 7th of May.

THE COURT: You mean before that?

PROF. MOORE: Filing.

THE COURT: Well, 6th or 7th of May, I'm talking about possible hearing date, so all of the paper business would be all over with by that time.

PROF. MOORE: Yes, we'll need --

MR. SMITH: We'll meet --

MR. IANNOTTI: The others --

PROF. MOORE: You are speaking now of Mr. Iannotti, aren't you?

THE COURT: No. I'm considering everybody. Mr. Zeldes, of course, will -- tentatively, I thought the Trustee for the income should best be heard the same time, the same day, put them all down at the same time.

PROF. MOORE: Messrs. Iannotti and Zeldes, it seems to me, your Honor, stand in a somewhat different position.

THE COURT: That's all right. One follows the other, that's all. Mr. Zeldes would follow after the other hearing. I'm again talking about a hearing date, but all of this is going to have to be calibrated to the time that you want to get out the statements. For everybody, as far as that goes, I suppose.

MR. BADER: Your Honor, I'm a little puzzled. We filed these applications in June, the applications when they were originally filed with your Court, and the order of notice

of -- your Court called for papers in opposition on the merits from all parties. Back then. I understand that counsel for the Trustee has -- desires to raise some points, but I submit, your Honor, that any lengthy time in view of the fact the document's been available to them for nine or ten months, doesn't seem -- doesn't sit very well.

PROF. MOORE: Well, wait a minute, Mr. Bader. Nine or ten months down at the Commission, though, it was February 5 before this Court really got jurisdiction.

MR. BADER: Mr. Moore, I will call to your attention that the order for notice for the application, initial applications, called for the filing of opposition papers on the petitions and on the requests for interim compensation by a day certain, which passed, incidentally, without the filing of any paper by counsel for the Trustee. I'm not raising that now and saying you are estopped. I am saying that it does seem to me nine months later you ought to be prepared to answer promptly.

MR. RAKER: Your Honor, I think that we could have a response of the Trustee with regard to the petitioners, other than Messrs. Zeldes and Iannotti, in thirty days. We would have a response of the Trustee to -- to all of them. With regard to Messrs. Zeldes and Iannotti, where I understood that your Honor wished to file -- wished to hear the matter on approximately May 6th, as to those, we would have a response

well in advance of that hearing, so we would propose, in other words, to file two statements of position. A prior one with regard to Mr. Zeldes and Iannotti, a second one and -- a date that your Honor would choose approximately thirty days from today, if that's possible, on all the others.

THE COURT: Well, I'm perfectly willing to go ahead completely with Mr. Iannotti and Mr. Zeldes. They have been held up a long time, and I am not sure that there's any great necessity for hearing the former indentured trustee ahead of time. But what time did you say you could get a statement in for -- with regard to the present indentured trustees for the first and second series?

MR. RAKER: You mean Messrs. Iannotti and Zeldes?

THE COURT: Yes.

MR. RAKER: We could have that in in a week, your Honor.

THE COURT: Well, all right.

MR. RAKER: If we could have the end of next week.

THE COURT: That would be the 23rd. All right.

MR. RAKER: Yes, sir. I may say, your Honor, that in terms of the thirty days that we're requesting for the -- for the others, that does not mean that we're going to start now for something that will be ready in thirty days. We have already commenced work on that. But we are hopeful that we can have something that would be of help both to the Court and, I think,

also to the petitioners in terms of explaining the views of the Trustee within that thirty-day period.

THE COURT: Then, I don't -- you mean within thirty days? You don't want to be bound to anything quicker? Sooner?

MR. RAKER: I would prefer not, if possible, your Honor, in order to be able to do as complete a job as we're trying to do, but we're certainly willing to meet the Court's convenience on the matter.

THE COURT: Well --

MR. RAKER: I don't know what your Honor might have had in mind in terms of later proceedings.

MR. SCOTT: May I make one minor suggestion, sir?

THE COURT: Indeed, you may.

MR. SCOTT: Professor Moore suggested, and Ithink you acquiesced, that it would probably be desirable, in form, at least, to have separate comments on -- I'm talking about, you know, your thirty days comment on the separate positions. I would hope that could be the case for the possibility of some flexibility of time schedule.

I regret to say that I'm going to be abroad during the entire month of May, and I would hope that I could --

THE COURT: We'd have to think about this.

MR. SCOTT: In other words, perhaps at the time for reply -- replies to the Trustee's statement of position might be subject to some flexibility and possible request for adjournment

or something of that sort. A very minor point, not minor to me.

THE COURT: If this is to be a sort of a plenary reply, as I understood you, for everybody else --

MR. RAKER: Yes, sir, but we're not trying to set a date, though, as to when --

THE COURT: It should be heard?

MR. RAKER: -- the petitioners would respond or when the petitions would be heard. I was only speaking, your Honor, of on the date which the Trustee would file something as to which the parties might then be able to plan how they wished to go forward, your Honor.

THE COURT: Yes. Well, I take it, Mr. Scott, you didn't expect to do this before May?

MR. SCOTT: No, sir.

THE COURT: What you would like is a little time after May to get it in?

MR. SCOTT: I would like to have some flexibility in the time when I respond to the Trustee's position as to my petition.

THE COURT: Well, I think that would be possible.

So you have your thirty days, and that will give you, then --

MR. RAKER: Yes, sir, and as far as we're concerned, depending upon what was meant by Mr. Bader in terms of flexibility, it's up to them whether they wish to fix a date today as to when

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they would respond or whether they wished to see it first and have a better idea as to what the next step ought to be in their view. We're not trying to hold them to any schedule, we're only trying to fix a schedule for ourselves at this time.

THE COURT: Well, thirty days would be thirty days from today.

MR. MIGDAL: Your Honor, may I make a suggestion, please?

THE COURT: Yes, sir.

MR. MIGDAL: My name is Migdal. If the -- if the Trustee needs thirty days to make his response to all of the petitions, I would hope that we could today set a date for hearing down, say, fifteen days after that. If we -- it may be that when we read that, we will find that there are witnesses that are required.

THE COURT: The difficulty of anything of that sort, Mr. Migdal, is that the thirty days is not a precise time, but it's a period withinwhich -- expected to get the statements of position in. Now, if the hearing dates are calibrated to that, I haven't any means of knowing what other assignments I should take, you see.

So you would want fifteen days, I take it, from that to reply?

MR. MIGDAL: I don't think that --

THE COURT: Would you need all that time?

MR. MIGDAL: My guess is either that we will need a good deal more, or we won't need any: that is, we will be satisfied to let the matter come to you in the posture in which it then is.

When it comes to the expertise which the Commission offered, our own expertise is more than enough, I think, for all of the petitioners here. The issues that will be drawn, as nearly as I can imagine, will be those that are necessary for the Trustee to discharge his responsibility to the Estate in calling to the Court's attention the problems this creates for the Estate. Those, it seems to me, ought not to require very much evidence. They'll simply have to be argued out and reasoned out before the Court. But if -- I am surprised if the questions raised are different, then I suspect that fifteen days will hardly be enough for anyone, and then we may have to come back and say we'll need time to prepare witnesses and to get the documents that seem to be required by the answer.

THE COURT: I thought possibly on a reply you could perhaps do it ina week or ten days. I don't know.

MR. MIGDAL: I would hope, your Honor, that we could. I feel sure we can at this moment without being utterly precluded from asking for additional time if that became necessary.

THE COURT: I hate to get too far into June, that's the trouble, I'm not sure whether I'll be --

MR. MIGDAL: Could I ask Mr. Raker whether he could

manage to give us his joint response by June the 1st -- by May the 1st, and that would make it possible for us to hope that there could be a hearing at least on some of the petitions --

THE COURT: That's a little -- well, it's up to him to say, of course, but that's --

MR. RAKER: I don't think it's going to be possible by that date, your Honor. We'll certainly try to shorten the thirty days if it's at all possible.

I understand the Court's desire, as well as Mr. Migdal's, in terms of an earlier date than getting us into June.

THE COURT: You see, if we made it the 7th instead of the 14th, if you could meet that, then if a week is given for a reply -- this has been stewed over and over and over, and I can't imagine why it would take more than a week of prayer and meditation to get out a reply.

MR. MIGDAL: I don't think so, either, your Honor.

THE COURT: And then I could assign quite quickly after that the week of the 17th, and that would get us going, and shortly after the middle of May, which I think perhaps would be best.

MR. MIGDAL: That would be entirely suitable to me, your Honor, if that were satisfactory to Mr. Raker, it wouldbe entirely suitable to me.

MR. RAKER: We can make it, your Honor.

THE COURT: You think you can make it?

MR. RAKER: Yes.

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MR. BADER: That leaves -- Mr. Scott's problem will have to be dealt with separately.

MR. SCOTT: I'll attend to it somehow.

THE COURT: Yes, we'll take care of that so that when Mr. Scott gets back, he'll have a week or ten days to --

MR. MIGDAL: Your Honor, may I -- excuse me.

THE COURT: Yes, go ahead.

MR. MIGDAL: There is one further point. Unlike some of the other petitioners, and like Mr. Zeldes and Mr. Iannotti, we are continuing to serve in the Estate, and so because we had this common position with the earlier indentured trustees and their counsel, and we have this common position with Messrs. Zeldes and Iannotti, the petition we filed covered only the period to the end of 1973. We have not filed for the period, as yet, from January 1, '74 on to date, a period very much covered by the applications of Messrs. Zeldes and Iannotti. I should like now to bring those petitions up to day so that they could be heard at the same time. If there is no objection to that from the Trustee.

THE COURT: I take it you could do that in the next few days?

MR. MIGDAL: Yes, your Honor, we could hurry with that.

THE COURT: It isn't a great deal?

MR. MIGDAL: No, I don't think so. The only important

part of it is the part that relates to the time spent on the preparation of the application which our petition did not include, but our fellow petitioners did include. That's the only lengthy part of it.

THE COURT: All right. The gentleman in the back row I think wanted to say something for some time, or am I wrong?

MR. STANTON: No, your Honor. I think that was me, your Honor, but I moved up here, and it turned out all right.

THE COURT: It was a good move. I'll try to remember that.

To sum this up in the cases of Petitioners Iannotti and Zeldes, the Trustee will have statement of position filed by the 23rd of April. That's a week from this coming Friday. And then I might ask you how much time you want before the hearing is held? What do you want to reply? If like the others you had a week, well, say, make it the 1st of May?

MR. IANNOTTI: For a reply, your Honor?

THE COURT: A reply.

MR. IANNOTTI: That would be adequate.

THE COURT: Then be available for hearing on, say, the 7th, or would you like -- would you like to go to the 10th? You see, the other answers will be in the 7th.

MR. RAKER: It will be a help, your Honor, if we could go to the 10th in terms of our preparation of the response to the other petitioners not to have to be down here on the 6th.

THE COURT: Very well. We'll make it --

MR. IANNOTTI: That's quite agreeable, your Honor.

THE COURT: The Clerk reminds me the District Court has a criminal sentencing and motion list on Monday, and, therefore, would the 11th be equally agreeable?

MR. IANNOTTI: I have one problem, your Honor. I have a deposition out of state on the 11th. Now, if we may, perhaps I can get that rescheduled. I will try to get it rescheduled, if it were important to have the hearing on the 11th rather than the 10th.

THE COURT: Well, the deposition is on the 11th?

MR. IANNOTTI: It is presently scheduled --

THE COURT: Do you think you could move it back to the 10th?

MR. IANNOTTI: I'm not sure. I'll try to reschedule it, your Honor.

THE COURT: All right. Perhaps --

MR. IANNOTTI: Could we do that, and then I can inform the Court and the counsel for the Trustee?

THE COURT: Tentatively, we'll leave it at the 11th.

Now, has anyone any thoughts or suggestions about hearings on the others? I'm not sure that they should all come at once. There, again, I think perhaps we should go forward with the original indentured trustee, if that is agreeable.

MR. BADER: It's all right with us.

THE COURT: What do you think, Mr. Bader, about the 18th of May?

MR. BADER: That's fine.

THE COURT: Is that all right?

MR. BADER: If we get a reply in -- sometime around the 14th. I don't have a calendar in front of me, I guess that's the preceding Friday.

THE COURT: All right. Now, I should think perhaps that one hearing would be enough. Do you have any rough idea how long it would take?

MR. BADER: Unless I have to put a witness on, your Honor, I think I can be very brief.

THE COURT: Possibly we could put another case or two down.

MR. BADER: I think, your Honor, not to presume something, but a good deal of this is going to be a common question, I think.

THE COURT: You mean with the others?

MR. BADER: Yes.

THE COURT: Particularly --

MR. BADER: Leaving out Iannotti and Zeldes, the old guard, Mr. Stanton.

THE COURT: Mr. Migdal?

MR. BADER: Bader and Mr. Migdal, and to the extent that Mr. Scott isn't on the high seas, there's a good deal of

commonness of issues. I don't know what the fight's going to be because I don't know what the answer is, but the raw material of this dispute, at least, is a common vein -- or that we're all digging at.

THE COURT: Well, I'd like to hear what the others have to say about that. It might be you would like to listen to the others and you wouldn't have to repeat.

MR. MIGDAL: Your Honor, if you could set the hearings down for the 18th and 19th, I suppose that we could seriatim get them through at that time. I agree with Mr. Bader that the issues are likely to be common issues, and that even if, for example, an expert on such an issue as overhead or fees for New York lawyers was required, we probably could find a common expert to testify on that subject.

THE COURT: Perhaps the Trustee could testify on that.

MR. MIGDAL: If we could have the 18th and 19th set aisde now, I would hope that we could --

THE COURT: Very well. That's quite agreeable with me. Anybody else want to comment on that proposal?

MR. RAKER: Your Honor, I think that's consistent with our thinking, as well. I believe that the Trustee would intend to testify, and I think that his testimony would primarily be also of a general nature that would apply to all petitioners, rather than to the --

THE COURT: Well, it's an economy for a lawyer's

time and any witnesses and what not if it were all done within the scope of those two days. So I'll fix those days, 10:30. Is that -- I think it's better to get start -- in fact, I can start at 10:00.

MR. MIGDAL: Your Honor, that would be agreeable.

THE COURT: Very well.

MR. BADER: That's fine.

THE COURT: Very well. Now, have we left anything unsolved?

MR. BADER: I don't know about Mr. Scott's schedule.

MR. SCOTT: I'll handle it somehow.

THE COURT: I think we can wait until you come back, Mr. Scott, and perhaps you can know ahead of time it will give you, say, ten days to answer in view of the fact that you perhaps will need a little time to get readjusted to your native land. You could perhaps let me know when you are back and what ten days you want in June.

MR. SCOTT: You are very kind, your Honor.

THE COURT: Well, I hope it will work out to the convenience of everybody. Otherwise, I think -- oh, yes.

MR. ISAACS: Your Honor, I have not filed a petition. I represented Oscar Gross up to a point.

THE COURT: I remember.

MR. ISAACS: I dropped the representation when my client sold some of the bonds, and I don't believe that they

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have filed an application for reimbursement of various expenses, including my retainer.

THE COURT: I haven't received it, and I don't think the Clerk's office received it.

MR. ISAACS: I intend to call them, I do not represent them, after this hearing, to let them know where things stand.

THE COURT: Yes.

MR. ISAACS: And I suppose I should tell them to get in anything they want to get in very fast.

MR. RAKER: Your Honor, without going to the merits of this, just procedural, we would have no -- the point I was trying to make, your Honor, was that I think that the substantive issues that would be raised by a petition of that nature by a person who does not fall into any of the categories of either committee or indentured trustee, it would be impossible for us to address in what we would plan to file for the 7th. So that if your Honor desires to -- would desire to have that heard together with the others, I think it would not be compatible with the present schedule.

MR. ISAACS: I did not mean to suggest that it could be heard at the same time, I don't think it is possible. I think it does involve matters on which the trustee would have to have time after something is filed.

THE COURT: Well, perhaps you can notify them. You

are not representing them any more?

MR. ISAACS: No, I do not represent them.

THE COURT: But if you do see that they get notice, then they'll have to decide what action, if any, they want to take. We'll at least have it noted for the record that you appeared today.

MR. ISAACS: I did appear. I would expect to file something on my own behalf, but I don't expect to file anything on behalf of possibly the group.

MR. RAKER: What I said, your Honor, would, of course, apply to Mr. Isaacs, as well.

MR. ISAACS: Yes.

THE COURT: Very well. Is there anything else that occurs to anyone?

MR. ZELDES: One mechanical matter, if your Honor please. On our order of notice for our allowance for fees, Petition for Order No. 800, it was made out for today because we originally thought it was going to be -- if your Honor would consider that amended to the date that you finally select, why, then, we'll give the regular notice.

THE COURT: Well, we've already selected it.

MR. ZELDES: May 11th.

THE COURT: So we'll adjourn the hearing on -- now, your is the same date, Mr. Iannotti?

MR. IANNOTTI: Yes, your Honor.

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THE COURT: Those petitions: that is, the indent -- present indentured trustees for the -- each of the second -- first and second series is postponed from today, or continued from today to 10:00 a.m. at this court in New Haven on May 11th, 1976.

MR. IANNOTTI: I trust, your Honor, ther'es no need for further notice, other than notice the Clerk will be giving?

THE COURT: Oh, no, I think so.

MR. ZELDES: Our hasn't been actually mailed out because we were waiting for confirmation, when we learned that it wouldn't be today, so we'll mail ours out.

THE COURT: Oh, I see.

MR. ZELDES: We had submitted the order for today's date, but your Honor never signed it.

THE COURT: I never signed it?

MR. ZELDES: You caught it in time.

THE COURT: Do I have it here?

MR. ZELDES: It is before your Honor, yes.

THE COURT: I think you sent it with it, I think Mr. Iannotti did.

MR. POLLACK: Your Honor, I submitted to you on behalf of the Bondholders' Committee a petition with a proposed order of notice. It seems to me in light of these proceedings today, since that was a petition to renew the earlier filed application, that that petition is not even necessary and that order of notice need not be signed, since we've all assumed, it seems to me, now,

that there is a renewal of the petitions that were filed back in June and they're meeting the schedule as announced today.

THE COURT: Yes, but this was done -- I never signed it to be heard today, and there's a little difference in that respect, so that we should put over the hearing, as I already have ordered, in the cases of Mr. Iannotti, trustee, and Mr. Zeldes.

MR. RAKER: On the May 11th -- if that's not convenient, that could commence at eleven o'clock instead of ten, it helps us in transportation --

THE COURT: Is that agreeable?

MR. IANNOTTI: Certainly, your Honor.

THE COURT: Mr. Scott, I wonder if you could more or less estimate about when you might begin your ten days? In other words --

MR. SCOTT: I expect to land here on the 8th of June.

THE COURT: 8th of June?

MR. SCOTT: Start as promptly thereafter as --

THE COURT: That's a Thursday, so we could say that it starts the next Monday, the 12th, right?

MR. SCOTT: Right.

THE COURT: So ten days -- oh, wait a minute, I'm looking at July. I lost a month.

The 8th is a Tuesday, and you'll be back in your office on the 9th or 10th?

MR. SCOTT: Yes, sir.

THE COURT: Well, suppose we let the ten days run from the 11th?

MR. SCOTT: Right.

THE COURT: Very well. I think --

PROF. MOORE: Your Honor, I have one mechanical thing. There were three orders entered on the petition dealing with the RRRR Act, could we have the first declaring the effect of the Act as A, 795A, and the next one B, and the concluding one as C?

THE COURT: Marked as such? Yes.

PROF. MOORE: Yes.

THE COURT: Very well. We'll adjourn court, I think.

(Court adjourned.)

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C E R T I F I C A T E

I hereby certify that the within and foregoing is a true and correct transcript of notes taken by me to record all proceedings at the hearing held on 4-16, 19 76, in the United States ~~District~~ Court for the District of Connecticut, at New Haven, Connecticut before the Honorable R C Anderson United States ~~District~~ Circuit Judge.

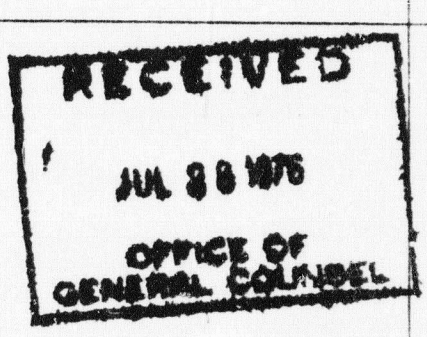
Official Court Reporter

Dated: 4-21, 19 76

At: New Haven, Connecticut

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT



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In the Matter of :

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, : Bankruptcy No. 30226

Debtor. :

- -x

United States Court House
New Haven, Connecticut
May 10, 1976

B e f o r e:

Hon. ROBERT P. ANDERSON, U.S.C.J.

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PROF. MOORE: Before we start the other proceedings, I would like to move the admission to the Bar in this proceeding of Thomas D. Alcott of the firm of Sullivan and Worcester. He is a member of the Bar of the Commonwealth of Massachusetts, Court of Appeals for theFirst Circuit, and the U. S. District Court for the District of Massachusetts.

THE COURT: I think that fully qualifies him, and very glad to welcome him to this.

PROF. MOORE: Here is the latest volume of our proceedings, your Honor.

THE COURT: I take it we will take these up in order. Anybody opposed to that?

PROF. MOORE: No, your Honor.

THE COURT: All right. We will go ahead with Motion for Order 789.

MR. SCHLOSS: My name is Irving Schloss, and I am appearing this morning on behalf of Lawrence W. Iannotti, Successor Trustee, Tyler, Cooper, Grant, Bowerman and Keefe, his counsel in these proceedings.

The matter we have before the Court this morning is a joint Petition for Order 789. That petition has two aspects: first, is a petition by Mr. Iannotti for interim compensation for trustee, and payment for legal expenses for the three-year period mid-1971 to mid-1974.

THE COURT: Why didn't you bring it down to date or

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through '75?

MR. SCHLOSS: In light of the problems we are having with the ICC, we thought it made sense to first settle on our right to be paid for that three-year period before going to the expense and effort of preparing another petition. If compensation is granted, it is our intention to bring our petition down to date.

THE COURT: Well, Mr. Zeldes was bold enough to go into 1975.

MR. SCHLOSS: We will try to do that in due course, your Honor.

The second aspect of our petition is an appeal from a final order of the ICC denying interim compensation for the period July 1, '71 through year end 1972.

This morning, we'll be focusing on the first aspect of the petition, and if the Court orders payment for that 18 months from mid-'71 to year ending '72, the appeal will be withdrawn as moot.

Turning, then, to the matter of compensation, it is our position that the services involved are compensable as requested for a number of reasons. First, Mr. Iannotti is a Court-appointed individual trustee, and, consequently, he is not a volunteer. He represents the largest claimant in this reorganization, and as a trustee, is a fiduciary, and subject to the prudent man rule. As a trustee, Mr. Iannotti -- and for

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that matter, as counsel who represent him -- are entitled to reasonble compensation under the indenture. As individuals, Mr. Iannotti lacks the resources of a corporate trustee and requires reasonable interim compensation.

Related to these fiduciary responsibilities are what we and the New Haven Trustee have referred to as the watchdog function. By that is meant the indentured trustee's role as an adversary party whose participation helps insure that the action taken in this reorganization is not wasteful and in the best interests of the Estate.

Carrying out that function, I submit, involves participation at certain hearings in this court and elsewhere, remaining informed of this and related proceedings, and meeting and consulting with the New Haven Trustee and his counsel in matters of strategy.

These services are, we believe, consistent with reasonable creditor participation, and with reasonable creditor protection as intended in the Bankruptcy Act. This sort of activity, we believe, is necessary if the reorganization is not to be an ex parte proceeding. And that such services are beneficial is a fundamental belief of our adversary system.

Failure to compensate such services may result in their disappearance. In these sentences our services --

THE COURT: Could I get myself straightened out perhaps a little, at least see if I am correct in what you have

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been doing?

This portion of your application, of course, was heard by the Interstate Commerce Commission, and they have found that nothing was due, is that right?

MR. SCHLOSS: The ICC's decision related to the first 18 months.

THE COURT: That includes what you're talking about here, the first 18 months.

MR. SCHLOSS: That's right.

THE COURT: Now, you have before me this morning an appear from that holding by the ICC and an application directly to the Court in the light of the new law.

MR. SCHLOSS: That's correct, your Honor.

THE COURT: So the first thing to deal with, I take it, is the holding of the Interstate Commerce Commission on this period?

MR. SCHLOSS: Our position is that if your Honor should grant the relief we have requested, the appeal would be essentially moot.

As your Honor ruled, the ICC no longer has jurisdiction or role in these proceedings.

THE COURT: I understand, but lest the question be raised, I should think if they had made some kind of a determination prior to the effective date of the new act, it might be claimed that that was a res judicata, and it seems to me that

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should be ruled on, disposed of first, and I am prepared to do that, because it does seem to me that the action taken by them was completely unlawful. The effect of what they did, and it persisted then, and if the ICC still had authority to pass upon these compensation matters in the first instance, it would completely frustrate the ability of the Court to appoint anybody to a position as indentured trustee.

It seems to me that statute, the law, custom and everything else, requires the Court see to it that there is indentured trustee appointed for bond issues such as this.

I suppose everybody here at least knows the history of the proceeding here. The Manufacturers Hanover Trust Company was the indentured trustee, and then resigned because of matters of disqualification that came up, and they elected to continue, I believe, as indentured trustees for issues of the New York Central or Penn Central or both, and withdrew from their office as indentured trustee for the first series New Haven bonds.

As everyone here recollects, a very diligent effort was made by contacting banks practically all over the eastern United States to find some institution that would take on -- as qualified banking institution -- take on the appointment as indentured trustee, and the Court was totally unable to find anyone, any institution that would take it, and in that situation appointed Mr. Iannotti, and in due course, he qualified

and has acted in that capacity ever since.

Now, if the ICC would take it on itself, or any other commission or board, to say that, "All right" -- to the Court -- "you go ahead and appoint, but don't think they are going to be paid anything," well, of course, the problems of getting an institutional trustee would be made utterly hopeless, even under more favorable circumstances, and that the Court would certainly not feel it could call upon any member of the Bar, qualified as he might be, to take it on those terms.

So it seems to me the action they took completely frustrated the carrying out of the duty which the Court had, and for that reason, my point of view, I must say the action was highly unlawful, so their determination in the case is overruled and vacated, and any entry of decision made pursuant thereto is reversed.

Now, I understand that the -- there is another, of course, application directed to this Court, and I -- you propose to take up first, and if we take that and go ahead with it, then the other thing can die on the vine. I think it's better to dispose of it in this expressed fashion rather than leave it to the inference -- it's withering on the vine, so you go ahead now, and you're now going to cover the period from the beginning up to December 31, '74.

MR. SCHLOSS: Actually, mid-1974. We have been doing this in 18-month segments.

THE COURT: Call it midnight, if you want to.

MR. SCHLOSS: What we are saying, essentially, is that our services are compensable on essentially the two major reasons: one, that we are fiduciaries; and two, that we are acting as a watchdog.

I think in that sense, we are talking about services that are administrative and routine: that is, they are either compelled by fiduciary responsibilities or by the necessity of acting as a watchdog.

THE COURT: Part of the administrative duties, that is sort of bookkeeping and accounting, and all that has been retained, I think, by the Manufacturers Hanover, is that right?

MR. SCHLOSS: That's right. They still act as transfer agent or registrar.

THE COURT: So whether conferring with them or not, that part is not included in what you're talking about?

MR. SCHLOSS: That's correct. We do have to deal to a limited extent with the bondholder inquiries and the like. I think what we are saying is that those services that when we perform, we are virtually compelled to perform as fiduciaries and as a watchdog.

For those reasons, we regard our services as beneficial to the Estate and as not duplicative. The proposed petition for interim compensation and for the allowance of legal expenses represent hourly rates that are usually charged by Tyler, Cooper

to its clients for the services rendered by the lawyers involved, and those hourly rates also reflect the charges for those lawyers' time during the period involved.

In addition, we believe those hourly rates are also consistent with those charged by other law firms in Connecticut.

THE COURT: They are not all the same.

MR. SCHLOSS: It's in the ballpark. I think it's consistent with those figures that are charged by other law firms.

THE COURT: Does the Bar have any minimum fee schedule any more?

MR. SCHLOSS: I don't believe they do.

THE COURT: I think some decision said that was improper.

MR. SCHLOSS: In terms of our experience as a firm practicing in Connecticut, it seems to us that the figures are consistent.

I should add that we have modified our petition in one respect, and that was to state that administrative and routine services for that decision should be deemed to include watchdog services. We made that argument principally to avoid the Commission's jurisdiction, and, in effect, our petition --

THE COURT: Of course, they didn't pretend to have jurisdiction over that. They disclaimed it a number of times.

MR. SCHLOSS: Yes, that's the reason why we made that

claim is to preserve our rights.

THE COURT: Well, on the other hand, watchdog services seem to me, in a broad sense, does include carrying out a responsibility of following everything with some care, and it's a little more than -- it's automatic administrative act.

MR. SCHLOSS: I agree with your Honor. Since we are the proponents of the petition, the burden of proof is upon us. And we have, as your Honor is aware, submitted a considerable volume of papers to this Court in regard to the petition.

The Petition for 789 is a verified petition. The Petitions for 691 and 774, which are the original petitions sent down to the ICC, were also verified, and we have submitted to the Court as exhibits to the pending petition, and Mr. Iannotti's verified statement before the Commission, and his additional affidavit, which is part of our petition for reconsideration before the ICC.

In light of that volume of evidence, we do not want --

THE COURT: Do you know the -- perhaps you don't have the bound volume of the --

MR. SCHLOSS: I don't have it with me.

THE COURT: You don't happen to know the page reference, do you, to -- the first two petitions?

MR. SCHLOSS: No, I don't, your Honor. I could give you the dates.

THE COURT: If you give me the date and number --

MR. SCHLOSS: The first of the petitions was 691, and it's dated, I believe, in March of 1973.

THE COURT: The second one?

MR. SCHLOSS: The second one is 774, and the date on that -- I will have in a minute -- it's November of 1974. It appears to be the 15th day of November of '74. It was filed with the Court.

THE COURT: The present one, 789, of course, we have before us, and then there is the modification. That was filed, too?

MR. SCHLOSS: That's correct, your Honor.

THE COURT: That 789 was December 23, 1975?

MR. SCHLOSS: That's correct.

THE COURT: And the modification -- is that the 23rd of March?

MR. SCHLOSS: Yes, sir, it appears to be.

THE COURT: Go ahead.

MR. SCHLOSS: In addition to those papers, we have two further affidavits on file. They were originally filed with the ICC. Mr. Iannotti's verified statement when the first petition went down to the ICC,and an additional affidavit filed as part of our petition for reconsideration before the Commission. In light of the --

THE COURT: What are the dates of those?

MR. SCHLOSS: The verified statement is dated

December 20, 1973, and the additional affidavit is dated April 29, 1974.

In light of those facts, we do not propose to introduce any additional evidence or testimony at this time.

Mr. Iannotti is, however, in the courtroom and will be available for examination on the matters in the petition should any of the parties present wish to examine him.

But our position is that your Honor is sufficiently familiar with the services rendered that you can rule upon the matters in the petition.

If your Honor wishes, I am prepared to review the services rendered over the three-year period in a very summary fashion. There is already a breakdown in the Petition for No. 789 by category of service, and I can, if your Honor wishes, review that for you.

THE COURT: I read it. Unless somebody else wants it read, unless there is something you want to add or feel that --

MR. SCHLOSS: There is nothing materially different from what has been filed with the Court.

I would like to hand up to your Honor a proposed form of order. I have copies which I will circulate among counsel who are present.

THE COURT: I think with perhaps all of these, I will not issue the orders until I have had a chance to hear all the -- I will keep it in mind. I have it here.

MR. SCHLOSS: Our proposed form of order does not take into account your reversal of the ICC decision, and, if you wish, we are prepared to submit a revised form of order that will take that into account.

THE COURT: All right.

MR. SCHLOSS: Thank you.

THE COURT: You can make that a separate order. This one is all right, I guess.

Do you want to inquire?

PROF. MOORE: Your Honor, we have been through the verified pleadings, affidavits and so forth, and we do not desire to cross examine. We just stand on the statement and position that we have filed.

THE COURT: Very well. We have your statement, your answer, and your statement of position on this. I have copies of that.

PROF. MOORE: Yes, you do, your Honor.

THE COURT: Do you want to cross examine Mr. Iannotti?

MR. ZELDES: I don't think it's necessary.

THE COURT: Anybody else?

If not, we will go on to the Motion for Oder No. 800, which is Mr. Zeldes' petition.

As I understand it, the ICC didn't do anything to you at all, did they?

MR. ZELDES: That is correct. They ignored us. So, to

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that extent, we are in somewhat of a different position than Mr. Iannotti.

THE COURT: We don't have to clear the deck before we take any action?

MR. ZELDES: Correct, your Honor.

If your Honor please, I am here on behalf of the Petition for Order No. 800, which really incorporates two prior applications, and perhaps at the outset I should give you those dates. The initial one was Petition for Order No. 718, dated January 28, 1974, and included the period February 11, 1972 through December 31, 1972. The second application was a petition for an order, which I don't believe ever got a designated number, but it was dated June 16, 1975, and it covered the period January 1, 1974 to June 15, 1975.

Just as in the prior application, if your Honor please, we have set forth the nature of the services rendered by my firm and by me.

I think perhaps if any overall summary of the legal position needs be raised, I think Professor Moore summarized it well at page 6 and 7 of his statement wherehe stated that the indentured trustee, the review of the matters coming before the Court and otherwise keeping informed of developments in the reorganization proceeding and their fulfilling of their duties under the trust indentures in and of themselves constitutes benefits to the Estate and explained the trustee's position

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at the same time.

I think it might be appropriate, however, for me to give you some more detailed information very briefly concerning the nature of the charges, the amount of the charges made on behalf of our petition.

In the initial petition, the one dated January 28, 1974, we seek compensation at the rate of $60 per hour, and I might add that our normal rates were somewhat greater than that at the time for our regular clients. Mine being charged at the rate of $75 an hour, and other partners of our firm being charged at the rate of 65 at that time.

The second petition, the one dated June 16, 1975, we seek compensation at the rate of $65 per hour, and I have one memorandum that I thought would be appropriate to submit to your Honor.

Judge Blumenfeld, at the request of the parties in the Hartford Fire, ITT antitrust case, asked me to serve as a special master on -- really, a minimaster -- to umpire a little bit of discovery proceedings between Mr. Royaton and his group and the plaintiff's group, and compensation was awarded to me in connection with that matter at the rate of $75 an hour, and I have a copy of Judge Blumenfeld's memorandum that I thought might be helpful. I have given a copy to Mr. Moeller.

If your Honor please, I have nothing else to offer at this time, unless, as in the case preceding us, there are any

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further questions that might be directed to Mrs. Amendola or to me; the nature of the work performed is set forth in the applications that are before your Honor.

THE COURT: Very well. Do you wish to inquire of Mr. Zeldes, Professor Moore?

PROF. MOORE: No, your Honor. I don't wish to cross examine Mr. Zeldes nor his associate. We have read the papers, they are verified, the affidavits -- and at the last time we argued that this Court had jurisdiction over all of these proceedings. We adhere to that.

The brief on that is with you, and we are content to stand on the statement and position which we have filed. Thank you.

THE COURT: Very well.

Anyone else wish to be heard?

You have no further proceedings, Professor Moore?

PROF. MOORE: Yes, your Honor, I do.

THE COURT: Yes, we have another motion. 801. Per diem?

PROF. MOORE: One is per diem compensation matter, and the other is a tort lawyer.

First, I should like to hand up an affidavit of service of process in relation to both Petitions for Orders No. 801 and 803, and ask the Court to find that due and adequate notice has been given.

THE COURT: Very well. I find that notice has been given to the hearing on Petition 801 and 803 in accordance with the orders of notice.

PROF. MOORE: In connection with the Donovan petition, which is verified, we think that the compensation claimed is very just. In fact, it is at a rate that was agreed upon by Mr. Smith with the firm, and this includes the per diem matter. All of the per diem payable on the part of the New Haven has now been compromised, ended, with the exception that under the last agreement we have the rest of the year to pay some four hundred odd thousand dollars.

THE COURT: Wasn't there something left on the union, in Boston?

PROF. MOORE: That's correct. That pertains -- that was an offset between New Haven and the Penn Central.

THE COURT: I think there has been a remarkable achievement taking care of all of the per diem claims over these past years, and the very favorable disposition that's been made of them. I think the Trustees, as counsel and as special counsel concerned, are all entitled to a great deal of commendation for carrying out such a fine achievement on behalf of the Estate.

With respect to this petition, I have read it, as you say, it's a sworn petition, and unless someone wishes to be heard on it, has anything to add, I will grant the petition.

PROF. MOORE: The settlements were made at approximately

25 percent. It varied somewhat depending upon the particular time the car day fell, because the rates were -- we started with a two dollar dollar rate, and then wound up with two-fifty, but it worked out so that we settled the per diem for around 25 percent, and aside from mentioning the counsel, the Trustee, certainly our comptroller, especially during the last two years, worked very effectively in cleaning up these latter cases and also collecting per diem accounts receivable due New Haven. We did have a few of those, and he collected about four hundred thousand dollars.

THE COURT: I think it's a great burst of work, and we look back at 1961 and look forward -- well, I worked on a fishing boat when I was in college a couple of years, and we make a pretty good haul, the captain would say, "That was better than I was in hopes," and it seems to me this comes in that classification.

PROF. MOORE: I would like to hand up the order for payment of compensation and expense.

THE COURT: Fine.

PROF. MOORE: The second case concerns payments of compensation approving reimbursement of expenses to John D. Dwyer --

THE COURT: Petition 803.

PROF. MOORE: -- who is one of our tort lawyers in Massachusetts. The petition is verified. We know what he has

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done, and it's for a period from July 1, 1974 through July 31, 1975, and the grand total is $8,650.13.

I may say that in Connecticut we have only one case left. In Rhode Island, there are four cases, which our counsel keeps telling us to leave them alone and let them wither on the vine. In New York, we have a total of 23 cases left yet, and 19 cases in Massachusetts.

THE COURT: Suppose they don't move very fast in New York and Massachusetts?

PROF. MOORE: I think they will move a little faster now, but we have gotten Mr. Putron out from under the jurisdiction of the ICC, for two years he hasn't gotten any pay, and being a personal injury lawyer, he wasn't accustomed to that kind of treatment.

THE COURT: He always dealt with other people's personal injuries, not his own.

PROF. MOORE: I think that's all, your Honor, sir.

THE COURT: Very well. Anyone wish to be heard on either of these? If not, we will approve the petitions and orders may issue accordingly.

I guess -- is that all there is -- do you have something?

MR. ZELDES: I had a minor point on my -- for Petition 800. We submitted an order with the petition, and I would request permission to submit a modified order to conform just to

the administerial aspects of when the hearing was held, since, as you recall, it was held, it was originally scheduled for an earlier date and continued to this date, but I would ask that there be a form of order that we have complied with the order of notice, and we will submit that, too, if your Honor please.

THE COURT: Very well. So found.

The next hearing is next --

PROF. MOORE: The 18th.

THE COURT: Tuesday, next Tuesday.

PROF. MOORE: It's 10:00 a.m.

THE COURT: 10:00 a.m. in Bridgeport.

(Court adjourned at 11:45 a.m.)

THE COURT: Anyone else have any evidence to offer?

MR. BROADLEY: Your Honor, I am John Broadley from the Department of Justice. I'm sorry we were late, but we were in court in New York this morning. I don't have any evidence, but the reason we came up here was to bring to the Court's attention the fact that the Secretary of Transportation has determined to seek a mandatory legislation to the --

THE COURT: Who is seeking this?

MR. BROADLEY: The Secretary of Transportation.

THE COURT: Oh, I see.

MR. BROADLEY: To return the jurisdiction over the compensation matters to the Inter-State Commerce Commission. We have a Motion For Leave to file Memorandum on amount of time and a Memorandum which sets forth the text of the Secretary's proposed legislation. It is hoped that the Amendment can be added onto an Amtrak Improvement Bill which has already been reported out by both the Senate Committee and the House Inter-State and Foreign Commerce Committee. It is expected that the resolution of the Amtrak

matter will occur within the next four to five weeks and, hopefully, the resolution of the Secretary's proposed amendment would occur within that time.

We thought it proper to bring to the Court's attention and also to the attention of the parties in this proceeding the fact that a possible change in the jurisdictional framework for this type of determination could occur within the near future, and if Your Honor would like, I could give Your Honor a copy of the Memorandum immediately. We haven't yet filed it with the Clerk.

THE COURT: Very well.

MR. BROADLEY: (Hands document)

MR. BADER: Your Honor, I will object to the receipt of this material both on the grounds that it is out of time and also on the ground that it is irrelevant and immaterial.

MR. POLLACK: I will join in that objection, Your Honor.

MR. STANTON: So will we, Your Honor, with the submission that the Court must decide the Petitions under the present law, not on the forecast as to the future course of statutory proceedings.

THE COURT: Well, of course, there is no such law passed at the present time. As I understand you, a committee of what, both the House and Senate?

MR. BROADLEY: Committees have reported out the Amtrak amendatory legislation.

THE COURT: But I mean does it contain a provision that jurisdiction over compensation matters should be passed upon by the I.C.C.?

MR. BROADLEY: No. It doesn't, Your Honor. They are seeking a floor amendment in the Senate.

THE COURT: Well, as it stands now, of course the law is the way it was when the December Act was passed or whatever the date of the Act is.

MR. BROADLEY: Yes, Your Honor.

THE COURT: So, actually, there is no change in the law.

MR. BROADLEY: There is no change in the law, but we thought we ought to bring to your attention the possibility.

THE COURT: They are making an effort to have a change?

MR. BROADLEY: Yes, Your Honor.

THE COURT: Maybe some others are trying to change it some other way.

PROFESSOR MOORE: At the last proceeding we had it was my understanding the Inter-State Commerce Commission had acceded completely to your jurisdiction, making no objection.

THE COURT: They so stated.

MR. KAPLAN: May I be heard on that point, Your Honor?

THE COURT: Yes. Who are you?

MR. KAPLAN: My name is Kenneth Kaplan. I represent the Inter-State Commerce Commission. We were advised by the Department of Transportation yesterday that they would make this presentation here this morning.

The Commission itself has not had the opportunity to be informed of the proposed legislation, has not seen it, and has not commented in any way at the present time. However, we would ask the Court along with the Department of Transportation and the Department of Justice to stay its action here on these petitions until such time as the Congress does have an opportunity

to act on this legislation and, in effect, keep it status quo until such time as legislation is acted on either for or against.

THE COURT: I take it this is only being sought by the Inter-State Commerce Commission?

MR. KAPLAN: No, sir. This is not being sponsored by the Inter-State Commerce Commission. We are just an interested party.

MR. BADER: May I inquire as to who authorized the Inter-State Commerce counsel to seek a stay here without papers?

MR. KAPLAN: My only purpose here this morning is to keep it status quo until such time as Congress does act.

THE COURT: Of course, there are all sorts of bills Congress is pulling and holding with an infinite number of conflicting interests in this railroad field. It's about as mixed as it could possibly be and it doesn't seem to me that it is necessarily going to come to rest in three or four weeks. After all, these people have waited a long time, and I really see no justification for attempting to stay the proceedings of the Court. You can't tell when it would ever come to rest and by the time that time is almost

up, I suppose other propositions come in and if the Court is going to have to continue to hop, skip and jump according to proposed legislation, why, we would be in the position of a twirling dervish most of the time. I will deny the stay.

MR. KAPLAN: Thank you, Your Honor.

THE COURT: Anybody else have anything on which they wish to be heard?

(No response.)

THE COURT: Well, I think if the Court has nothing further and no one has anything, would you like to be heard, Mr. Migdal?

MR. MIGDAL: Your Honor, I thought that we were going to have a chance to make some closing appeal on the basis of the briefs that had been submitted, and I would like to say something with respect to the legal points in the matter.

THE COURT: Very well. Go right ahead.

MR. MIGDAL: If it is permissible at this time?

THE COURT: Certainly.

MR. MIGDAL: There has been an enormous amount of labor in this case, and I feel that the benefits to the estate have been plainly

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In the matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	)	In Proceedings for the Reorganization of a Railroad No. 30226

MOTION FOR STAY OF JUDGMENT ENTERED PURSUANT TO SECTION 77(c)(12) OF THE BANKRUPTCY ACT PENDING APPEAL.

Comes now the Interstate Commerce Commission, pursuant to F.R.C.P. 62(d) and (e), and moves this Court to stay, pending appeal, its judgment entered on June 30, 1976, in the above-captioned proceeding. A memorandum in support of the Commission's position is attached to this Motion.

Respectfully submitted,

ARTHUR J. CERRA
General Counsel

CHARLES H. WHITE
Associate General Counsel

KENNETH G. CAPLAN
Attorney
Interstate Commerce Commission
Washington, D.C. 20423
(202) 275-7740

Attorneys for the Interstate Commerce Commission

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AUG 27 1976
OFFICE OF GENERAL COUNSEL

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

FINDINGS AND CONCLUSIONS ON MOTION OF INTERSTATE COMMERCE COMMISSION FOR STAY OF JUDGMENT PENDING APPEAL

The motion of the Interstate Commerce Commission for a stay of judgment of June 30, 1976, concerning the award of compensation and reimbursement of fees pursuant to § 77(c) (12) of the Bankruptcy Act, 11 U.S.C. § 205(c)(12), having come on regularly for hearing; and all parties having been heard or given an opportunity to be heard, and the Court being duly advised in the premises,

Now makes its findings and conclusions as follows:

This Court's Orders of April 14, 1976 are res judicata and binding upon the ICC that, by virtue of § 618(b) of the RRRR Act, all powers and duties of the ICC under § 77 of the Bankruptcy Act with regard to proceedings for reorganization of the New Haven terminated as of February 5, 1976, and then became

212.2

vested in this Court, including the adjudgment of fees and expenses under both § 77(c)(2) and § 77(c)(12) and whether the fees and expenses related to services rendered before or after February 5, 1976.

II.

The ICC's Appeal from the judgment of June 30, 1976 is frivolous.

1. The issues which the ICC states that it proposes to raise on the appeal are not real issues in the context of this case.

2. The appeal is an impermissible collateral attack upon the Order of April 14, 1976.

3. The ICC has no standing to appeal from the Court's judgment on the merits of June 30, 1976.

4. The ICC made no objections or legal challenge until this appeal either as to jurisdiction or the merits during the proceedings that culminated in this Court's judgment of June 30, 1976; and may not now be heard on an appeal from that judgment.

III.

The ICC is not entitled to a stay because it fails to show, *inter alia*, that there is a likelihood it will prevail on appeal, or that any injury will be suffered if the judgment is reversed or modified.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: August 7th, 1976.

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GENERAL COUNSEL

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IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

ORDER DENYING MOTION OF INTERSTATE COMMERCE COMMISSION FOR STAY OF JUDGMENT OF JUNE 30, 1976 PENDING APPEAL

This Court having heard the Motion of the Interstate Commerce Commission for Stay of Judgment of June 30, 1976 pending its appeal, and the Court having made its findings and conclusions, now ORDERS:

That the Motion of the Interstate Commerce Commission for a stay pending its appeal be and the same is denied both as a matter of law and a matter of discretion.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: August 10th, 1976.

(10713)

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TD

Petition for Order No. 691

In The

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	No. 30226

PETITION OF TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO LAWRENCE W. IANNOTTI, SUCCESSOR TRUSTEE UNDER DEBTOR'S FIRST AND REFUNDING MORTGAGE DATED AS OF JULY 1, 1947, FOR ALLOWANCE OF INTERIM COMPENSATION FOR THE PERIOD JULY 1, 1971 THROUGH DECEMBER 31, 1972

NOW COME Tyler, Cooper, Grant, Bowerman & Keefe, counsel to Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage dated as of July 1, 1947, and respectfully represent:

1. That from July 1, 1971 through December 31, 1972, your petitioners, Tyler, Cooper, Grant, Bowerman & Keefe, rendered professional services to the aforesaid Successor Trustee with respect to such matters as were directed by the Successor Trustee, and that they have continued to do so since December 31, 1972.

2. That on September 3, 1971, this Court by Order No. 655 appointed your petitioners as legal counsel to the aforesaid Successor Trustee.

3. That your petitioners have not previously filed herein any

petitions for the allowance of interim compensation and reimbursement of expenses from the estate of the Debtor.

4. That during the period July 1, 1971 through December 31, 1972, your petitioners, in rendering such professional services, have devoted a total of 772 hours through 3 of its lawyers, of which time 380 hours were spent by Lawrence W. Iannotti, a partner of petitioners, as more fully set forth in Appendix A hereto.

5. That the services rendered by petitioners during the period covered by this petition are set forth in detail in Appendix A hereto, and may be classified as falling into five general categories:

A. Matters relating generally to the Debtor's reorganization and the duties of the Successor Trustee.

B. Matters relating to the appeal taken by the Trustees of the Property of the Penn Central Transportation Company in the United States Court of Appeals for the Second Circuit.

C. Matters relating to the appeals to the United States Court of Appeals for the Third Circuit brought by various New Haven interests from several orders entered by the Penn Central Reorganization Court.

D. Matters relating to the preparation and filing of a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit filed in the United States Supreme Court, and a response to the petition for a writ of certiorari before judgment to the United States Court of Appeals for the Third Circuit, filed by the New Haven Trustee.

E. Matters relating to the protection of the New Haven Estate's position in the reorganization of the Penn Central Transportation Company under Section 77 of the Bankruptcy Act.

6. That reasonable compensation for the services rendered by your petitioners, as counsel for the aforesaid Successor Trustee in this proceeding, can be determined at the conclusion of the proceedings, but that petitioners properly should receive interim compensation pending completion of the proceedings and the filing by petitioners of a petition for allowance of final compensation.

7. That this Court held in a decision dated July 28, 1969, reported at 304 Federal Supplement 1121 that counsel for Indenture Trustees might file for interim compensation, that such petitions would be entertained, and that such compensation be paid in cash.

8. That the tasks and responsibilities which were reposed in your petitioners as legal counsel, the nature of the professional services performed, the benefits to the Debtor from such services and the time spent are such as to justify interim compensation for your petitioners for the period July 1, 1971 through December 31, 1972, in an amount not less than $42,450, plus reimbursement for disbursements of $1,850.91 as itemized in Appendix B hereto.

9. That all interim compensation granted your petitioners and all fixing of maximum limits of interim compensation by the Interstate Commerce Commission should be without prejudice to a petition for final compensation and the fixing of maximum limits by said Commission with respect thereto.

WHEREFORE, your petitioners pray that this Court:

1. Enter an order for transmittal by the Clerk of this Court to the Interstate Commerce Commission of copies of the within petition of Tyler, Cooper, Grant, Bowerman & Keefe for allowance of interim compensation, and of such order, to the end that said Interstate Commerce Commission, upon receipt of such copies, may approve

the maximum limits of the allowance to be made for interim compensation of Tyler, Cooper, Grant, Bowerman & Keefe for services for and on behalf of the Successor Trustee of the Debtor's First and Refunding Mortgage Bonds for the period July 1, 1971 through December 31, 1972; and

2. Reserve jurisdiction to consider and pass upon the allowance of interim compensation to petitioners for services rendered from July 1, 1971 through December 31, 1972, upon receipt by this Court of the report of said Interstate Commerce Commission approving said maximum limits of allowance for interim compensation.

Dated at New Haven, Connecticut, this 9th day of February, 1973.

TYLER, COOPER, GRANT, BOWERMAN & KEEFE

By Donald F. Keefe
Donald F. Keefe, A Partner

STATE OF CONNECTICUT)
) ss.: New Haven, February 9, 1973
COUNTY OF NEW HAVEN)

Donald F. Keefe, a partner in the firm of Tyler, Cooper, Grant, Bowerman & Keefe, counsel to the Successor Trustee under the First and Refunding Mortgage 4% Bonds of The New York, New Haven and Hartford Railroad Company, Debtor, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

Donald F. Keefe

Subscribed and sworn to before me this 9th day of February, 1973.

Notary Public

My Commission expires:

(Notarial Seal)

April 1, 1976

APPENDIX A

TO PETITION FOR ORDER NO. 691 OF TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO LAWRENCE W. IANNOTTI, SUCCESSOR TRUSTEE UNDER THE DEBTOR'S FIRST AND REFUNDING MORTGAGE DATED AS OF JULY 1, 1947, FOR ALLOWANCE OF INTERIM COMPENSATION FOR THE PERIOD JULY 1, 1971 THROUGH DECEMBER 31, 1972

Introductory.

This Appendix sets forth in detail the nature of the work performed by petitioners, the resulting accomplishments and benefits to the Debtor's Estate and the Bondholders' interests, and the responsibilities placed upon petitioners.

Time Expended.

During the period from July 1, 1971 through December 31, 1972, Tyler, Cooper, Grant, Bowerman & Keefe rendered professional services by 3 of its lawyers who devoted to the matters set forth in detail below a total of 772 hours as follows: partners, 383 hours (of which 380 hours were spent by Lawrence W. Iannotti); and associates, 389 hours.

Services.

The work performed by petitioners at the direction of the aforesaid Successor Trustee during the period from July 1, 1971 through December 31, 1972 may be classified as falling into five general categories. Such work, together with benefits and responsibilities in connection therewith, is set forth in detail as follows:

A. Matters relating generally to the Debtor's reorganization and the duties of the Successor Trustee.

a. Nature of Service. In order to represent the Successor Trustee effectively, counsel was required to review initially the First and Refunding Mortgage and Indenture, to review and examine

pertinent documents dealing with prior events in the Debtor's reorganization, and to engage in discussions with counsel for the resigning Indenture Trustee. All of these activities were conducted exclusive of the substantial periods of time necessary to familiarize counsel with the earlier proceedings which gave rise ultimately to the appeals taken by the New Haven interests in the United States Court of Appeals for the Third Circuit and by the Penn Central Trustees in the United States Court of Appeals for the Second Circuit. The petitioners prepared for and appeared at several hearings in the United States District Court for the District of Connecticut with respect to funds held by the Manufacturers Hanover Trust as Indenture Trustee, with respect to the sale of real property in New London, Connecticut to the New London Redevelopment Agency under the equitable lien declared and imposed by the United States District Court for the District of Connecticut, with respect to various settlement proposals involving the Penn Central Trustees and others regarding the sale or lease of various former New Haven Railroad lines, and with respect to various petitions for compensation and other petitions submitted by the New Haven Trustee to the New Haven Reorganization Court. Petitioners have conferred on several occasions with the New Haven Trustee, his counsel, and counsel for the New Haven 4½ First Mortgage Bondholders' Committee in regard to the condition of the New Haven Estate, the status of the reorganization, pending litigation, and future proceedings. With the exception of the initial review, these activities are continuing and are still necessary for petitioners to represent the Successor Trustee adequately.

b. Benefit. As a result of the consultations and reviews discussed above, petitioners have been able to represent the interests of the New Haven Estate and the First Mortgage Bondholders in an effective and competent manner as described below. Peti-

tioners were initially at a disadvantage since they were appointed at a time when the New Haven reorganization had been in progress for ten years and the New Haven Estate was the subject of complex litigation in several courts. By dint of their efforts, petitioners were able to participate in the proceedings then pending and to aid in the representation of the Estate's interests in several courts.

c. Responsibilities. Petitioners have been responsible for the formulation and presentation of the position of the Successor Trustee as the representative of the First Mortgage Bondholders and a party in interest in the New Haven Estate before several courts, including the United States District Court for the District of Connecticut. As described in greater detail below, they have been involved in the preparation of briefs, the arguing of cases, the review of settlement proposals, and the entire range of activities in which attorneys normally engage in large-scale complex litigation.

d. Time. 143 hours.

B. Matters relating to the Appeal taken by the Trustees of the Property of the Penn Central Transportation Company in the United States Court of Appeals for the Second Circuit.

a. Nature of Service. Following the decision of the New Haven Reorganization Court declaring an equitable lien and constructive trust upon the former New Haven assets, the Penn Central Trustees perfected an appeal in timely fashion to the Second Circuit. Following close analysis of the Penn Central Trustees' brief and in opposition to the Penn Central Trustees' position, petitioners submitted a brief of approximately 60 pages in length. Independent and extensive arguments in support of the New Haven Reorganization Court's decision were presented in that brief. Petitioners also participated in one third of the oral argument before the Court of Appeals for the Second Circuit on January 3, 1972. In order properly to represent the Successor Trustee as a representative of the First Mortgage Bond-

holders in this significant litigation, petitioners were required to examine carefully the proceedings in various courts, including the United States Supreme Court, and before the Interstate Commerce Commission for several years prior to the appointment of the Successor Trustee, and to research the novel and difficult questions of law raised by the Penn Central Trustees' appeal.

b. Benefit. Despite vigorous efforts by petitioners and other counsel for the New Haven interests, the Second Circuit reversed the New Haven Reorganization Court's memorandum and order imposing an equitable lien and constructive trust. Petitioners, along with other counsel, were able, however, to persuade one judge as to some of the jurisdictional arguments in favor of the New Haven Reorganization Court's decision which, at the time, appeared to increase the likelihood that the United States Supreme Court would issue a writ of certiorari to the Second Circuit. In addition, petitioners, along with other counsel, were able to persuade the Second Circuit that the New Haven Reorganization Court had not been wrong on the merits and this fact may be of benefit to the New Haven Estate in the event an opportunity presents itself sometime in the future for another court or administrative agency to impose an equitable lien in favor of the New Haven Estate.

c. Responsibilities. Sole responsibility for the preparation of a brief and for oral argument on behalf of the Successor Trustee was assigned to petitioners.

d. Time. 354 hours.

C. Matters relating to the Appeals to the United States Court of Appeals for the Third Circuit taken by various New Haven interests from several orders entered by the Penn Central Reorganization Court.

On December 31, 1971, the Penn Central Reorganization Court entered Order No. 546, In re Penn Central Transportation Company,

337 F.Supp. 779 (E.D. Pa. 1971), which held that the New Haven Estate was entitled to a tentative lien of indeterminate amount and priority in the Penn Central reorganization. Appeals were taken by the New Haven Trustee, the Successor Trustee, and the New Haven Bondholders' Committee chiefly on the grounds that the Penn Central Reorganization Court's Order constituted an impermissible collateral attack on the New Haven Reorganization Court's decision and violated the basic principles of res judicata.

a. Nature of Service. Following the taking of the above-mentioned appeals, the Penn Central Trustees moved that the Successor Trustee's appeals be dismissed on the grounds that he lacked standing in light of an earlier decision of the Third Circuit, In re Penn Central Transportation Company, 455 F.2d 811 (3rd Cir. Jan. 3, 1972). Petitioners responded and the Court ruled that the motion should be denied. Thereafter, petitioners filed an independent brief and reply brief on the merits. Following the submission of briefs by the various appellees, the New Haven Trustee filed a petition for a writ of certiorari before judgment to the United States Court of Appeals for the Third Circuit and petitioners prepared a response for submission to the Supreme Court in support of this petition. The petition was denied as was the petition for a writ of certiorari to the Court of Appeals for the Second Circuit. In the light of those developments, it was decided by the New Haven interests to have the appeals in the Third Circuit voluntarily dismissed and that has been done. The tentative lien still remains in force.

b. Benefit. This litigation was required in order to protect the equitable lien and constructive trust declared by the New Haven Reorganization Court. The efforts of petitioners and other counsel kept the equitable lien and constructive trust in force as long as possible. Although the Supreme Court did not grant either the peti-

tion for certiorari to the Second or the Third Circuit, the denial of the Penn Central Trustees' motion to dismiss on the grounds of standing should facilitate entry by the Successor Trustee into the Penn Central reorganization, as a party or as an intervenor, with the ability to scrutinize those proceedings closely and to aid in protecting the New Haven Estate. The decision to dismiss the appeals resulted in the retention of the tentative lien.

c. Responsibilities. Responsibility for the preparation of the brief on the merits, the reply brief, the response to the Penn Central Trustees' motion, and the response in support of the New Haven Trustee's petition for certiorari were all assumed by the petitioners.

d. Time. 162 hours.

D. Matters relating to the preparation and filing of a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit filed in the United States Supreme Court and a response to the petition for a writ of certiorari before judgment to the United States Court of Appeals for the Third Circuit, filed by the New Haven Trustee.

Following the adverse Second Circuit decision of March 17, 1972, the New Haven Trustee filed a motion for a stay of the court's mandate pending the filing of a petition for a writ of certiorari within 30 days of the filing of the motion. Petitioners also filed their petition for a writ of certiorari in timely fashion and the mandate was stayed. Additionally, petitioners prepared and filed a response in support for the New Haven Trustee's petition before judgment to the Third Circuit.

a. Nature of Service. Petitioners prepared a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit, using the appendix prepared by the New Haven Trustee in order to save the New Haven Estate the additional expense of multiple printings of the same material. That petition set forth arguments which had been presented to the Second Circuit, and pre-

served by petitioners, and other arguments based upon the general importance of this litigation in the construction and administration of the Bankruptcy Act. The New Haven Trustee filed a petition for a writ of certiorari before judgment to the Court of Appeals for the Third Circuit and petitioners speedily filed a supporting response stating additional reasons why the Trustee's petition should be granted.

b. Benefit. The protection of the New Haven Reorganization Court's decision declaring an equitable lien and constructive trust upon the former New Haven assets was absolutely vital in order for the reorganization to be successfully completed. Counsel for each of the New Haven interests filed an independent petition and attempted to present the strongest arguments possible in order to protect this asset. The efforts of petitioners and other counsel meant no avenue was not explored which could protect the equitable lien and constructive trust and that these protective devices remained in effect over one year.

c. Responsibilities. Petitioners drafted a petition for a writ of certiorari to the Second Circuit, reviewed the response of the Penn Central Trustees, and filed a supporting response to the New Haven Trustee's petition to the Third Circuit.

d. Time. 56 hours.

E. Matters related to the reorganization of the Penn Central Transportation Company under Section 77 of the Bankruptcy Act.

The New Haven Estate holds 956,576 shares of common stock of Penn Central Company and $34,025,800 principal amount of divisional first mortgage bonds of Penn Central Transportation Company, the latter being secured by the real property conveyed to Penn Central on December 31, 1968. Moreover, the Supreme Court of the United States in the New Haven Inclusion Cases has required an additional

payment of over $28 million and a reassessment by the Commission of the consideration already received in order to accord the New Haven Estate full liquidation value for the assets conveyed to Penn Central.

a. Nature of Service. Petitioners were called upon to advise the Successor Trustee as to the position to be taken under the aegis of the New Haven Trustee on various matters in the Penn Central Reorganization Court. Petitioners analyzed at length and discussed with the attorneys for the New Haven Trustee the response to be made to the Penn Central Trustees' proposals regarding a plan of reorganization and the interim reports which they have filed periodically. Petitioners have also reviewed the terms of a proposed sale of the so-called Grand Central Terminal properties by the Penn Central Trustees and have engaged in consultations with the attorneys for the New Haven Trustee in connection with this matter. Petitioners reviewed a settlement proposal between the New Haven Trustee and the Penn Central Trustees regarding the disposition of Penn Central's vehicular bridges located in the Commonwealth of Massachusetts and the sale of and a reservation of an easement over various railroad lines sold to the Commonwealth of Massachusetts. The petitioners appeared in the New Haven Reorganization Court in regard to these matters. This transaction was approved by the New Haven Reorganization Court in its Order No. 669.

Petitioners also met with the attorneys for the New Haven Trustee and the New Haven Bondholders' Committee in New York and appeared in the New Haven Reorganization Court in connection with the proposed refinancing of notes of Penn Central International, N.V. and the strategy to be employed by the New Haven Trustees at a meeting of the shareholders of the Penn Central Company.

Though not a party to the Penn Central reorganization, the Successor Trustee was frequently required to formulate a position on matters before the Penn Central Reorganization Court and to advise the New Haven Trustee of that position. In addition, as more fully described above, the Successor Trustee was involved in appeals taken to the United States Court of Appeals for the Third Circuit. From the point of view of protecting the Bondholders' interests in the Penn Central reorganization, perhaps the most significant event was the apparent reconsideration of the Third Circuit's decision in In re Penn Central Transportation Company, Debtor, 455 F.2d 811 (3rd Cir. Jan. 3, 1972), where the Court held that the New Haven Bondholders' Committee lacked standing to appear generally in the Penn Central reorganization on the grounds that their interest was derivative since they represented the creditors of a creditor, namely the New Haven Trustee. Following the taking of an appeal by the Successor Trustee and the New Haven Bondholders' Committee to the Third Circuit from Order No. 546 and related orders, the Penn Central Trustees moved that these appeals be dismissed on grounds of lack of standing. Petitoners filed a response which, despite the recent precedent to the contrary, resulted in the Court's ruling that the motions should be denied. This ruling that petitioners in effect have standing before the Penn Central Reorganization Court may enable petitioners to represent the Successor Trustee in the Penn Central reorganization as a party or an intervenor, unless the Third Circuit reverses itself in a manner which is not anticipated at the present time.

b. Benefit. As stated above, the New Haven Estate's claim against the Penn Central Transportation Company constitutes its largest asset. Consultation and cooperation with the New Haven

Trustee to protect this interest and to ensure that payment is made in accordance with the terms of the Supreme Court's decision in The New Haven Inclusion Cases, 399 U.S. 392 (1970) are necessary in order for the New Haven's reorganization to be completed with any success. Though the primary role of protecting the New Haven's interest in the Penn Central reorganization thus far rests upon counsel for the New Haven Trustee, petitioners were helpful in formulating the positions which would aid the New Haven Trustee's attorneys in the Penn Central reorganization. Cooperation between the New Haven interests is essential if the Estate is to be protected in the Penn Central reorganization. In some cases, the need for consultation required rapid analysis of and decision-making concerning steps proposed to be taken in the Penn Central reorganization and petitioners have been able to respond as each situation has developed.

APPENDIX B

DISBURSEMENTS BY TYLER, COOPER, GRANT, BOWERMAN & KEEFE

July 1, 1971 to December 31, 1971

Travel	$ 127.49	
Trustee's Bond	40.00	
		$ 167.49

January 1, 1972 to December 31, 1972

Travel	$ 128.89	
Trustee's Bond	40.00	
Court Filing Fees	220.00	
Printing and Brief Preparation Costs	716.38	
Xeroxing	366.40	
Telephone Calls	211.75	
		$1,683.42
Total		$1,850.91

ORDER OF NOTICE

Upon reading the foregoing petition, it is ORDERED:

1. That said petition is hereby set down for hearing in this Court at 10:30 A.M., or as soon thereafter as the Court can hear the same, on the day of February, 1973 at New Haven, Connecticut.

2. That petitioners be and they hereby are directed to give notice of said hearing by timely mailing copies of said petition and this order to all parties who are customarily notified of hearings in these proceedings.

Enter: _____
Robert P. Anderson
United States Circuit Judge,
sitting by designation.

Dated: February , 1973

U.S. DISTRICT COURT
NEW HAVEN, CONN.

Petition for Order No. 754

In The

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	)	No. 30226

PETITION OF LAWRENCE W. IANNOTTI, SUCCESSOR TRUSTEE UNDER DEBTOR'S FIRST AND REFUNDING MORTGAGE DATED AS OF JULY 1, 1947, FOR ALLOWANCE FOR EXPENSES INCURRED FOR THE PERIOD JANUARY 2, 1973 THROUGH JUNE 28, 1974 INCLUSIVE IN CONNECTION WITH THESE PROCEEDINGS

NOW COMES Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage dated as of July 1, 1947, and respectfully petitions this Court, pursuant to the provisions of Section 77(c)(12) of the Bankruptcy Act, for an allowance for the actual and reasonable expenses incurred by him for the period January 2, 1973 through June 28, 1974 in connection with these proceedings, and in support thereof, respectfully represents:

1. That on July 29, 1971, this Court by Order No. 650 appointed your petitioner as Successor Trustee.

2. That on September 3, 1971, this Court by Order No. 655 appointed Messrs. Tyler, Cooper, Grant, Bowerman & Keefe as your petitioner's legal counsel.

3. That from July 1, 1971 through June 28, 1974, Messrs. Tyler, Cooper, Grant, Bowerman & Keefe rendered professional services to your petitioner with respect to such matters as were directed by your petitioner, and that they have continued to do so since June 28, 1974.

4. As Successor Trustee, and as a matter of law, your petitioner owes a fiduciary duty to each of the holders of the Debtor's First Mortgage Bonds and is obligated to represent those holders with the same degree of care and skill which a prudent man would use under the circumstances in the conduct of his own affairs.

5. That during the period January 2, 1973 through June 28, 1974, Messrs. Tyler, Cooper, Grant, Bowerman & Keefe rendered professional services to your petitioner in connection with these proceedings, as more specifically described in Appendices A and B attached hereto and made a part hereof.

6. That the services rendered by Messrs. Tyler, Cooper, Grant, Bowerman & Keefe during the period covered by this petition are set forth in detail in Appendices A and B hereto and may be classified as falling into five general categories:

A. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company.

B. Matters relating to the reorganization of The Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

E. Advice on various administrative matters involving your petitioner in his capacity as Successor Trustee.

7. By Order No. 691, this Court transmitted to the Interstate Commerce Commission the petition of Messrs. Tyler, Cooper, Grant, Bowerman & Keefe for compensation for legal services rendered during the period July 1, 1971 through December 31, 1972, which petition was received and docketed by the Interstate Commerce Commission on April 2, 1973 and is still pending before said Commission.

8. That reasonable compensation for the services rendered by Messrs. Tyler, Cooper, Grant, Bowerman & Keefe as counsel for your petitioner in this proceeding can be determined at the conclusion of these proceedings, but that they promptly should receive interim compensation pending completion of these proceedings and the filing by them of a petition for allowance of final compensation.

9. That this Court held in a decision dated July 28, 1969, reported at 304 Federal Supplement 1121, that counsel for Indenture Trustees might file for interim compensation, that such petitions would be entertained, and that such compensation would be paid in cash.

10. That your petitioner should be reimbursed for the fees for legal services rendered by Messrs. Tyler, Cooper, Grant, Bowerman & Keefe, and that the nature of the professional services performed, the benefits to the Debtor from such services and the time spent are such as to justify interim compensation for the period January 2, 1973 to June 28, 1974 in an amount not less than $33,750.00, plus reimbursement for disbursements of $2,630.47 as itemized in Appendix B hereto.

WHEREFORE, your petitioner prays that this Court:

1. Enter an order for transmittal by the Clerk of this Court to the Interstate Commerce Commission of twenty copies of the within

petition and of such order, to the end that said Interstate Commerce Commission, upon receipt of such copies, may approve the maximum limits of the allowance to be made for the actual and reasonable expenses requested in this Petition and may file with this Court its report thereon;

2. Reserve jurisdiction to consider and pass upon the allowance of expenses and interim compensation requested in this Petition for the period January 2, 1973 through June 28, 1974, upon receipt by this Court of the aforesaid Interstate Commerce Commission Report.

Dated at New Haven, Connecticut, this 15th day of November, 1974.

Lawrence W. Iannotti,
Successor Trustee

STATE OF CONNECTICUT)
) ss.: New Haven; November 15, 1974
COUNTY OF NEW HAVEN)

Lawrence W. Iannotti, Successor Trustee under The New York, New Haven and Hartford Railroad Company's First and Refunding Mortgage, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

Lawrence W. Iannotti

Subscribed and sworn to before me this 15th day of November, 1974.

Notary Public

My Commission Expires: March 31, 1977

(Notarial Seal)

Order No. 754

In The

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In Proceedings For The Reorganization
Of A Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Debtor	No. 30226

ORDER RESPECTING THE ALLOWANCE FOR EXPENSES INCURRED BY INDENTURE TRUSTEE

The petition of Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage dated as of July 1, 1947, for the allowance for expenses incurred for the period January 2, 1973 through June 28, 1974, having been duly filed with this Court, it is ORDERED:

1. That the Clerk of this Court forthwith transmit to the Interstate Commerce Commission, Washington, D. C. 20423, twenty certified copies of the petition of said Lawrence W. Iannotti for the allowance for expenses for the period January 2, 1973 through June 28, 1974 and of this order, to the end that said Interstate Commerce Commission, upon receipt of said copies, may approve the maximum limits of the allowance to be made upon said petition for expenses of said Lawrence W. Iannotti for the period therein specified, and may file with this Court its report thereon; and

2. That jurisdiction be and it hereby is reserved in this Court to consider and pass upon the allowance for expenses to said Lawrence W. Iannotti for the period specified in the said petition upon receipt by this Court of the report of said Interstate Commerce Commission approving said maximum limits of allowance for expenses.

ENTER:

Robert P. Anderson
United States Circuit Judge
sitting by designation

Dated: Nov 21, 1974

CERTIFICATE OF SERVICE

This is to certify that copies of the within petition and order were deposited in the U. S. Mails, first-class postage prepaid, to all parties who are customarily notified of hearings in these proceedings, on November 26, 1974.

L. S. Adkins

Attorney

Appendix A

Petition for Order No. 754

In The

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	No. 30226

AFFIDAVIT OF DONALD F. KEEFE, A MEMBER OF THE FIRM OF TYLER, COOPER, GRANT, BOWERMAN & KEEFE, IN SUPPORT OF THE PETITION OF LAWRENCE W. IANNOTTI, AS SUCCESSOR TRUSTEE, FOR ALLOWANCE FOR EXPENSES INCURRED FROM JANUARY 2, 1973 THROUGH JUNE 28, 1974 INCLUSIVE IN CONNECTION WITH THESE PROCEEDINGS

STATE OF CONNECTICUT)
) ss.: New Haven, November 14, 1974
COUNTY OF NEW HAVEN)

DONALD F. KEEFE, being duly sworn, deposes and says:

1. I am a member of the firm of Tyler, Cooper, Grant, Bowerman & Keefe, counsellors at law, and am submitting this affidavit in support of the petition (the "Petition") of Lawrence W. Iannotti, as Successor Trustee (the "Successor Trustee"), for allowance for expenses incurred from January 2, 1973 through June 28, 1974.

2. My firm has rendered professional services to the Successor Trustee from July 1, 1971 to date with respect to such matters as were directed by the Successor Trustee.

3. This Court by Order No. 655 appointed my firm as legal counsel to the Successor Trustee.

4. During the period January 2, 1973 through June 28, 1974, my firm spent a total of 584 hours in connection with the matters hereinafter described through two of its lawyers, of which time 257 hours were spent by Lawrence W. Iannotti, a partner of my firm, as more fully set forth in Appendix B to the Petition.

5. The services rendered by my firm during the period covered by the Petition are set forth in detail in Appendix B to the Petition, and may be classified as falling into five general categories:

A. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company.

B. Matters regarding the reorganization of The Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

E. Advice on various administrative matters involving the Successor Trustee.

6. The tasks and responsibilities which were reposed in my firm as legal counsel, the nature of professional services performed, the benefits to the Debtor from such services and the time spent are such as to justify interim compensation for my firm for the period January 2, 1973 through June 28, 1974 in an amount not

less than $33,750, plus reimbursement for disbursements of $2,630.47, as itemized in Appendix B to the Petition. Details regarding the nature of the services rendered by my firm, the benefit to the Debtor's estate, the responsibilities involved and the time expended are set forth in greater detail in Exhibit 1 to this Affidavit.

7. Neither I nor my firm nor any member or associate thereof has entered into any agreement, written or oral, express or implied, with the Petitioner, the Debtor or any other person in interest or any attorney or other agent of any such party, for the purpose of fixing the amount of compensation to be allowed or paid to any party or other person from the assets of the Debtor's estate for the services my firm has rendered or expects to render in these proceedings.

WHEREFORE, I respectfully request that the relief requested in the Petition be in all respects granted.

Donald F. Keefe

Subscribed and sworn to before me this 14th day of November, 1974.

Notary Public

In The
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	No. 30226

EXHIBIT 1 TO AFFIDAVIT OF DONALD F. KEEFE IN SUPPORT OF PETITION FOR ORDER NO 754 OF LAWRENCE W. IANNOTTI, AS SUCCESSOR TRUSTEE UNDER THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD'S FIRST AND REFUNDING MORTGAGE DATED AS OF JULY 1, 1947, FOR ALLOWANCE OF EXPENSES INCURRED FROM JANUARY 2, 1973 THROUGH JANUARY 28, 1974 INCLUSIVE IN CONNECTION WITH THESE PROCEEDINGS

Introductory.

This Appendix sets forth in detail the nature of the work performed by Tyler, Cooper, Grant, Bowerman & Keefe, the resulting accomplishments and benefits to the Debtor's estate, and the responsibilities placed upon counsel. To summarize, in the present state of the New Haven and Penn Central reorganizations, representation of the interests of the Debtor's estate and the First Mortgage Bondholders consists of efforts to protect the New Haven's claim against the Penn Central, maximize the likelihood of payment, shorten the waiting period until payment and avoid actions inconsistent with the New Haven's claim to be a secured creditor of the Penn Central. During the period covered by the Petition, the bulk of the services performed centered around the proceedings in the Penn Central reorganization before the Interstate Commerce Commis-

sion (the "Commission") in the summer of 1973 and efforts to dismiss the Penn Central reorganization. The work we have done has been directed primarily towards securing a dismissal of the Penn Central reorganization and the creation of an equity receivership to liquidate the Penn Central's assets. This position is the only one which will protect the constitutional rights of the Debtor's estate as a Penn Central creditor and provide a means by which the New Haven's claim against the Penn Central will be paid.

We have attempted to perform these services in the most economical and least duplicative manner possible. As was true at the time our prior petition for compensation was filed, we have not attempted formally to become a party in the Penn Central proceedings in the Eastern District of Pennsylvania or taken an active role in those proceedings. In light of the major part being taken by the New Haven Trustee in those proceedings, our general identity of interests there and an agreement on most issues there, our active participation cannot be justified at this time. Similarly, since we concur in the judgment of the New Haven Trustee's counsel that the Regional Rail Reorganization Act of 1973 (the "Act") is unconstitutional, we have not taken any part in the extensive litigation which has been brought to have the Act declared unconstitutional. We have disagreed on the litigation's strategy but not on its goals. To the extent possible, we have avoided having more than one lawyer represent the New Haven estate's creditor interests at hearings in Washington, D.C. or Philadelphia. During the aforementioned Commission hearings, the three major New Haven creditor interests were able to coordinate their schedules so that only one lawyer attended on a given day. These efforts are, we believe, consonant with our obligations to represent our client, the Successor Trustee, and to preserve the Debtor's estate by,

among other things, minimizing the cost of legal representation consistent with the requirement of adequate and responsible advocacy. On the other hand, it should be borne in mind that the Successor Trustee and we, as his counsel, have a fiduciary obligation to protect the interests of the First Mortgage Bondholders and that, with a number of different parties, some duplication of effort must and will always occur.

Time Expended.

During the period from January 2, 1973 through June 28, 1974, Tyler, Cooper, Grant, Bowerman & Keefe rendered professional services by two of its lawyers who devoted to the matters set forth in detail below a total of 584 hours as follows: Partners, namely Lawrence W. Iannotti, 257 hours; and Associates, 327 hours. The rates at which their time is billed are approximately $65 an hour for partners and $45 an hour for associates.

Services.

The work performed by Tyler, Cooper, Grant, Bowerman & Keefe at the direction of the Successor Trustee during the period from January 2, 1973 through June 28, 1974 may be classified as falling into five general categories. Such work, together with the benefits and responsibilities in connection therewith, is described in detail as follows:

A. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company.

a. Nature of service. Most of the work performed in the New Haven reorganization during the period covered by the Petition concerned the New Haven's claim as a secured creditor in the Penn Central reorganization. Richard Joyce Smith, the New Haven Trustee, filed a plan of reorganization for the Penn Central dated June 27,

1973 with the Commission. That plan had major implications for the New Haven estate since it posited that the Penn Central could in fact be reorganized and that the New Haven estate would receive Penn Central income notes. After considerable study and discussion, we and the other New Haven creditor interests concluded that the plan was not feasible because it required the cooperation of other parties which would not be forthcoming and which could not be compelled by the New Haven Trustee. We concluded that the Penn Central was, in any event, not reorganizable on an income basis. Since at least the summer of 1973, we have openly taken the position that the Penn Central reorganization should be dismissed, that the Penn Central should be liquidated and that any other alternative would be violative of the Fifth Amendment to the United States Constitution. Subsequent events have indicated that this course of action is the only one which will protect the Debtor's interest as a Penn Central claimant.

Following extensive hearings before the Commission on the reorganization of the Penn Central, we prepared a petition for the New Haven Reorganization Court instructing the New Haven Trustee to abandon his plan and to move to dismiss the Penn Central proceedings under Section 77(g) of the Bankruptcy Act. The New Haven Trustee independently prepared such a motion which he filed in the Penn Central Reorganization Court. A hearing was held on the petition in the New Haven Reorganization Court. Since that time, our efforts have been directed at insuring that the motion is relentlessly pursued.

b. Benefit. The effect of our efforts has been to help forestall the New Haven Trustee's plan, which the Commission itself did not find feasible, and to further the process by which the Penn Central is moving toward dismissal of the reorganization and liqui-

dation. Such efforts have been directed at protecting the value of the New Haven estate's claim against the Penn Central and its constitutional rights as a Penn Central creditor.

c. Responsibilities. We have been responsible for representing the Successor Trustee in regard to the New Haven Trustee's plan, in proceedings before the New Haven Reorganization Court, and in subsequent discussions with other New Haven interests.

d. Time. 55 hours and 30 minutes.

B. Matters regarding the reorganization of the Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

a. Nature of Service. Much of the work performed during the period covered by the Petition concerned the Penn Central Trustees' plan of reorganization and proceedings following the filing of the Commission's report in regard to the reorganization of the Penn Central.

We carefully reviewed the Penn Central Trustees' reports on reorganization planning and their proposed plan of reorganization. That plan required extensive analysis since it appeared on its face to approximate our position. Our examination indicated that the plan contained numerous possibilities for delay and would not adequately protect the interests of the New Haven estate. For that reason, we opposed the plan in hearings before the Commission and the Penn Central Reorganization Court. Consequently, we urged a cessation of rail services since the Commission had failed to certify any of the proposed plans of reorganization to the Court. This position was also taken in papers filed with the Court.

We also engaged in a continuous review of major decisions in the Penn Central Reorganization Court and the United States Court of Appeals for the Third Circuit which had significant implications

for the New Haven estate, such as the decision or proceedings regarding the proposed Pennco settlement, the Park Avenue properties, and the Columbus Option opinion of the Third Circuit.

Finally, we appeared at the hearing in the Penn Central Reorganization Court on the New Haven Trustee's motion to dismiss the Penn Central proceedings under Section 77(g) of the Bankruptcy Act of 1973.

b. Benefit. Although we have not formally appeared as a party in the Penn Central reorganization, we have advised counsel for the New Haven Trustee of our position, appeared at hearings and filed memoranda and statements of position. We have thereby aided in protecting the New Haven estate's claim against the Penn Central and in moving the Penn Central proceedings toward dismissal and liquidation. Our position has been consistent throughout this period, and we have repeatedly insisted that our spokesman, the New Haven Trustee, be persistent in pursuit of his motion to dismiss and build the record which we believe is necessary for such a motion to succeed on the merits and protect creditor interests.

c. Responsibilities. We were responsible for all the above.

d. Time. 119 hours and 45 minutes.

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

a. Nature of Service. As stated above, the plans of reorganization filed by the Penn Central Trustees and the New Haven Trustee had to be analyzed for purposes of the hearings held before the Commission during July and August of 1973. The plan of reorganization subsequently filed by the Penn Central Company also required analysis. We appeared before the Commission at a pre-hearing conference to present our position. We appeared and cross-examined

witnesses over a five day period during those months. That appearance and cross-examination required extensive review of the evidence submitted by the Penn Central Trustees and the New Haven Trustee in regard to the valuation of assets, cash position, physical condition of the rail assets, the viability of various configurations of rail lines and similar matters. Subsequent to the conclusion of the hearings, we filed a legal memorandum and proposed findings of fact on behalf of all the New Haven creditor interests. We also extensively reviewed the Commission's report, especially as it affected the New Haven estate and the likelihood that the Penn Central reorganization would be dismissed.

b. Benefit. Our work enabled the interests of the Debtor's Estate and the First Mortgage Bondholders to be protected since we opposed all of the plans of reorganization, as did the Commission, and we pressed for the cessation of rail services and liquidation. In this respect, we differed with the New Haven Trustee and independent representation was essential. We placed our position upon the record at every reasonably available opportunity and attempted, with other parties, to demonstrate that the Penn Central could not be reorganized on an income basis or upon the basis proposed by the New Haven Trustee. The upshot of our and other parties' efforts was that the Commission did not certify any of the plans and a motion to dismiss was filed shortly thereafter, partly as a result of our insistence.

c. Responsibilities. Responsibility for the review of the plans of reorganization, representation on certain days of the New Haven creditor interests, preparation of a legal memorandum and proposed findings of fact rested upon us. Throughout, we received the help and cooperation from counsel for the other New Haven creditor interests.

d. Time. 261 hours.

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

Though the New Haven Trustee has taken the lead in representing the New Haven estate in its efforts to have the act declared unconstitutional, counsel was required to participate in hearings in two courts to protect the interests of the First Mortgage Bondholders.

This entailed first a careful review of the Act's provisions and its implications for the future of the Penn Central and New Haven reorganizations. This required careful consideration of the impact of the Act upon interim operating losses, the likelihood of eventual payment for the Penn Central rail assets and the value, if any, of the consideration to be given by the Consolidated Rail Corporation for those assets. Conferences were then held with counsel for the other New Haven creditor interests to determine the strategy to be adopted in regard to the Act, and meetings were held in Washington, D. C. of the New Haven creditor interests, the New Haven Trustee and major creditor and governmental interests. Despite the litigation undertaken by the New Haven Trustee, we made efforts to insure that he would continue to pursue his motion to dismiss the Penn Central proceedings.

We appeared at and participated in the hearing in the New Haven Reorganization Court under Section 207(b) of the Act. We also prepared for and appeared at a similar hearing before the Penn Central Reorganization Court. In light of the conclusions reached by those Courts that the New Haven is not covered by the Act and the Penn Central cannot be reorganized on an income basis, it appeared most economical to have the New Haven Trustee undertake

further litigation without involvement by other New Haven interests. Nonetheless, we have had to review briefs and other pleadings filed in that litigation in order to remain informed.

b. Benefit. We have been helpful in securing a ruling from the New Haven Reorganization Court that the New Haven is not subject to the Act, a ruling which will permit maximum flexibility in the further course of the New Haven proceedings. We have taken the position in pleadings before the Penn Central Reorganization Court and with counsel for the New Haven Trustee to the effect that the Act is unconstitutional and provides additional grounds for dismissing the Penn Central proceedings. The efforts by counsel for all the New Haven interests have brought dismissal and liquidation nearer, thus increasing the likelihood that the Debtor's estate will receive satisfaction for its claim against the Penn Central.

c. Responsibilities. We have prepared pleadings, developed a strategy and position for the Successor Trustee and represented that position, with other counsel, before the New Haven and Penn Central Reorganization Courts.

d. Time. 130 hours.

E. Advice regarding various administrative matters involving the Successor Trustee.

a. Nature of Service. This category of services involves advice to the Successor Trustee in regard to his fiduciary obligations to the First Mortgage Bondholders and any other legal matters which may arise in connection with his functions as Successor Trustee. Counsel has advised the Successor Trustee as to possible liabilities under Rule 10b-5 under the Securities and Exchange Act of 1934 and problems of inside information. Annual letters to the First Mortgage Bondholders have been prepared by

counsel after careful review of the New Haven Trustee's annual report. Counsel has also advised the Successor Trustee in regard to responding to questions received from First Mortgage Bondholders.

b. Benefit. The services rendered by counsel have enabled the Successor Trustee to operate without legal entanglements, at the same time serving his beneficiaries in the most effective manner.

c. Responsibilities. Counsel has had the sole responsibility of representing the Successor Trustee and advising him as to possible legal entanglements.

d. Time. 17 hours and 45 minutes.

APPENDIX B

TYLER, COOPER, GRANT, BOWERMAN & KEEFE
COUNSELLORS AT LAW

N. B. GRANT
ALD F. KEEFE
LES J. PARKER
IAM R. MURPHY
JN P. DEVANE
IARD G. BELL
RENCE W. IANNOTTI
HAEL J. DORNEY
IARD R. SNYDER
S M. WINER
UEL W. BOWLBY
CE LEWELLYN
ERT A. CIULLA
PH C. LEE
ES G. KENEFICK, JR.

205 CHURCH STREET
NEW HAVEN, CONNECTICUT 06509

Lawrence W. Iannotti, Successor Trustee
under The New York, New Haven and
Hartford Railroad Company's First and
and Refunding Mortgage Dated as of
July 1, 1947
205 Church Street
New Haven, Connecticut 06509

TO TYLER, COOPER, GRANT, BOWERMAN & KEEFE, DR.

For professional services rendered from January 2, 1973 through June 28, 1974, in connection with various matters described more specifically below.

A. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company.

1973	
May 1, 3, 9, 17, 24, June 12, July 5, 6, 9, 10, 11, Oct. 1, 9, 11, 16, 26, 29, 30, Nov. 1, 2,	Review of proposed plan of reorganization of the Debtor proposed to be filed with the Interstate Commerce Commission by Richard Joyce Smith, Trustee of the property of the Debtor; review of position to be taken in connection therewith and implications for the New Haven estate; consultation with other creditor interests re same; travel to and attendance at meetings in the New York office of the New Haven Trustee re plan;
1974	
Feb. 21, 25, March 1, 4, 6, 8, 12, 13, 15, 19, 21, April 2, 25, 30, May 2, 8, 13, 16, 17, 20, 24, June 12, 13, 21, 24,	preparation of petition for order instructing the New Haven Trustee to abandon plan of reorganization and to file a motion to dismiss the Penn Central reorganization under Section 77(g) of the Bankruptcy Act; appearance at and conduct of hearing in the New Haven Reorganization Court in connection with aforesaid petition; subsequent consultation with other counsel, including New Haven Trustee's counsel, regarding compromise of issue; review of petitions filed by other parties in the New Haven reorganization such as petitions for compensation, settlement of per diem claims and annual and quarterly reports regarding the New Haven estate

B. Matters regarding the reorganization of The Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

1973	
Jan. 4,	Review of Penn Central Trustees' reports to the Penn Central Reorganization Court re reorganization planning; review of proposed steps in Penn Central Trustees' plan of reorganization; review of and discussion with other New Haven interests regarding Pennco settlement pending before the Penn Central Reorganization Court; preparation of position in regard to hearing in Penn Central Reorganization Court subsequent to issuance of Interstate Commerce Commission report on reorganization; attendance at pre-hearing conference and hearing in the aforesaid Court; preparation and presentation of position at hearing urging a cessation of rail services; preparation and filing of a memorandum pursuant to Order No. 1321 in the Penn Central Reorganization Court; preparation of legal memorandum in same proceeding; review of preliminary version of Regional Rail Reorganization Act of 1973 and consideration of effect on Penn Central and New Haven estates; review of opinion of United States Court of Appeals for the Third Circuit regarding proposed sale of Park Avenue properties and effect on New Haven First Mortgage Bondholders' lien; study of Columbus Option opinion of the aforesaid Court; preparation for and attendance at hearing in the Penn Central Reorganization Court on the New Haven Trustee's motion to dismiss the Penn Central reorganization pursuant to Section 77(g) of the Bankruptcy Act; consultation with other New Haven interests to formulate position on motion to dismiss in connection with hearing pursuant to Section 207(b) of the Regional Rail Reorganization Act of 1973; review of Providence & Worcester easements and effect on lien of first mortgage
Feb. 1, 6, 10, 15, 17, 21, 26,	
Mar. 7, 13,	
Apr. 18, 23,	
July 5, 6, 9,	
Aug. 14, 15,	
Sept. 25, 26,	
Oct. 1, 2, 3, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 22,	
Nov. 15,	
Dec. 27, 28, 29, 31,	
1974	
Jan. 2, 7,	
Feb. 9, 11, 13, 15, 21,	
Mar. 4, 7, 15, 26, 27, 28, 29,	
Apr. 2, 3, 4, 5, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, 22, 24,	
May 1, 2, 3, 6, 13,	
June 13,	

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

1973	
May 10, 24,	Review of plans of reorganization filed by the New Haven Trustee, the Penn Central Trustees and, when subsequently filed, the Penn Central Company; appearance and presentation of position at pre-hearing conference before the Interstate Commerce Commission in Washington, D. C.; adoption of united position by New Haven interests and time-table to permit one party to cover each day of hearing; preparation for hearings by review of evidence submitted by the Penn Central Trustees and New Haven Trustee regarding the valuation of assets, cash position, physical condition of the rail assets, etc.; attendance at hearings on August 13, 16, 17, 23 and 24; preparation of cross-examination of witnesses; review of evidence filed by the Penn Central Company; preparation and filing of brief on behalf of all New Haven creditor interests; preparation and filing of proposed findings of fact; extensive review of transcript in connection therewith; review of late-filed proposed testimony submitted by the United States Department of Transportation; review of briefs filed by other parties including the Penn Central Trustees, the relevant labor unions, the State of New York, the Commonwealth of Massachusetts and further Penn Central Trustees' testimony; extensive review of Interstate Commerce Commission report in connection with the proceedings just then concluded for impact on New Haven Trustee's plan of reorganization and the New Haven estate
July 16, 17, 18, 19, 24, 30,	
Aug. 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31,	
Sept. 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24, 25, 26, 28,	
Oct. 1, 2, 3, 4, 15, 17, 19, 31,	
Nov. 1, 2,	

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

1974	
Jan. 2, 7, 8, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 29, 30, 31, Feb. 4, 5, 8, 11, 13, 14, 22, 27, 28, Mar. 1, 4, 5, 6, 11, 18, 20, 21, 22, 23, 25, 26, Apr. 1, 17, 19, 23, 24, 30, May 1, 13, 14, 15, 20, 23, 24, June 7, 11, 20,	Review of provisions of statute and development of strategy to protect New Haven estate; telephone conferences with other New Haven counsel regarding procedural steps to be taken in connection with anticipated proceedings under the Act; attendance at meetings of New Haven interests and of major creditor and governmental interests in Washington offices of Messrs. Sullivan & Worcester regarding strategy to be pursued by the New Haven Trustee; discussions and negotiations with counsel for the New Haven Trustee regarding the need to pursue his motion under Section 77(g) of the Bankruptcy Act; preparation for and attendance at hearing in the New Haven Reorganization Court pursuant to Section 207(b) of the Act; review of Penn Central Trustees' evidence and New Haven Trustee's memorandum for Section 207(b) hearing before the Penn Central Reorganization Court; review of pleadings for said hearing; attendance at the aforesaid hearing in the Penn Central Reorganization Court; extensive review of Order No. 1512 of the Penn Central Reorganization Court; review of pleadings and briefs filed by counsel for the New Haven Trustee in various courts under the Act and conferences with other New Haven interests in regard to pending litigation

E. Advice on various administrative matters involving the Successor Trustee.

1973	
Jan. 4, 8,	Review of possible problems created by
Feb. 19,	Rule 10b-5 under the Securities Exchange
Mar. 16, 22, 28,	Act of 1934 and information regarding
Apr. 18, 23,	the New Haven estate; review of New
May 1, 3, 13,	Haven Trustee's Annual Reports; prepara-
17, 18,	tion of letters to First Mortgage
June 1, 4, 7,	Bondholders accompanying New Haven
28,	Trustee's Annual Reports; consideration
Aug. 14, 15,	of possible sending of letter to Bond-
Sept. 25, 26,	holders in regard to pending develop-
	ments in light of passage of Regional
1974	Rail Reorganization Act of 1973
Jan. 3, 4, 8,	
15, 20,	

Total for services rendered.....$33,750.00

DISBURSEMENTS

Date Paid		
1973		
January 9	Payment to Messrs. Cohen, Shapiro, Polisher, Shiekman & Cohen, local counsel in Philadelphia for disbursements	$ 14.45
May 4	Payment to Messrs. Cohen, Shapiro, Polisher, Shiekman & Cohen for services rendered as local counsel	379.50
May 11	Payment to William J. Mack Company, North Haven, Connecticut, printers, for copies of annual report of the New Haven Trustee sent to First Mortgage Bondholders	300.69
July 12	Travel round trip to New York	25.00
July 23	Expenses for two round trips to Washington, D. C. to attend Interstate Commerce Commission hearings on July 13 and 17	252.54
August 15	Air fare round trip to Washington, D. C. to attend hearings at the Interstate Commerce Commission	73.27
August 15	Payment to V. F. McNeil for premium for Trustee's bond	40.00
August 24	Miscellaneous expenses for taxis and meals in Washington, D. C. incurred on August 13, 16 and 17	15.10
August 30	Expenses for hotel room, taxis, meals incurred during two-day stay in Washington, D. C. from August 23 through 24	76.00
September 4	Round trip air fare for trip made on August 16, 1973, to Washington, D. C.	73.91
September 4	Roundtrip air fare for trip made to Washington, D.C. on August 23, 24, 1973	73.91

September 10	Round trip train fare from New York to to New Haven and taxis for meeting held on September 7, 1973	14.00
October 9	Expenses incurred in Washington, D. C. during period August 15-16 while attending Interstate Commerce Commission hearings	52.72
October 10	Train fare and taxis for round trip from New Haven to Philadelphia, Pennsylvania, to attend hearing before the Penn Central Reorganization Court	21.20
October 16	Travel expenses, hotel and meals for two-day stay in Philadelphia from October 11-12	99.64
October 22	Check to Clerk of the United States Court of Appeals for the Third Circuit for copy of opinion in the Penn Central reorganization	1.00
October 24	Check to Clerk of the United States Court of Appeals for the First Circuit for copy of opinion in the Boston and Maine reorganization	1.00
November 13	Check to Sanders, Gale & Russell, Inc., New Haven, Connecticut, Court Stenographers for transcript of proceedings before the New Haven Reorganization Court	44.00
December 15	Overtime to prepare petitions before the Interstate Commerce Commission	16.71
	Postage during the course of the year	59.53
	Telephone calls	118.74
	Expense for 4482 Xerox copies	224.10
Total of disbursements from January 2, 1973 through December 31, 1973		$ 1,977.01

1974

January 16	Round trip for two lawyers by train to New York City	$ 20.00
January 18	Two round trip tickets by Metroliner to Washington, D. C.	104.30
February 4-5	Payment for two hotel rooms for co-counsel to attend hearing in New Haven Reorganization Court	53.16
March 25	Railroad ticket and other expenses from New Haven to Philadelphia and back	60.04
April 14-15	Travel to Washington, D. C.	42.53
May 6	Travel to Philadelphia	29.75
May 16	Payment to William J. Mack Company for copies of the annual report of the New Haven Trustee sent to First Mortgage Bondholders	343.68
Total disbursements from January 2, 1974 through June 28, 1974		$ 653.46
Total disbursements from January 2, 1973 to June 28, 1974		$ 2,630.47

Total for services rendered		$33,750.00
Disbursements		
January 2, 1973 - December 31, 1973	$1,977.01	
January 2, 1974 - June 28, 1974	653.46	
		$ 2,630.47
Total due and owing		$36,380.47

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ORDER

SERVICE DATE

NOVEMBER 15 '73

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21669

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY REORGANIZATION
(COMPENSATION - COUNSEL TO MORTGAGE TRUSTEE)

IN THE MATTER OF DIRECTING MODIFIED PROCEDURE IN THE ABOVE-ENTITLED PROCEEDING.

PRESENT: Kenneth H. Tuggle, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding and Order No. 691 of the United States District Court for the District of Connecticut, in proceeding No. 30226, pending therein for the reorganization of The New York, New Haven and Hartford Railroad Company, debtor, pursuant to the provisions of section 77 of the Bankruptcy Act, as amended (11 U.S.C. 205), directing the clerk of the court to transmit to this Commission the petition filed with the court by Tyler, Cooper, Grant, Bowerman & Keefe, counsel to Lawrence W. Iannotti, Successor Trustee under the debtor's First and Refunding Mortgage dated July 1, 1947, requesting that the court allow them interim compensation and reimbursement of expenses for the period July 1, 1971, through December 31, 1972, within such maximum limits as may be approved as reasonable by this Commission, and the request by the court for this Commission to determine the maximum limits within which such allowances for interim compensation and reimbursement of expenses may be made to petitioners;

It appearing, That the petition was filed pursuant to Section 77(c)(12) of the Bankruptcy Act (11 U.S.C. 205(c)(12)) which provides, inter alia, that within maximum limits fixed by this Commission the court may make allowance for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by other representatives of creditors, and which further provides that the Commission shall, after hearing, fix the maximum allowances which may be allowed by the court pursuant to Section 77(c)(12):

It is ordered, That the question of the amounts to be fixed as maximum allowances for interim compensation for services rendered and for reimbursement for reasonable and necessary expenses incurred by petitioners in connection with the above-entitled reorganization proceeding be handled under modified procedure; and that the parties thereto or their representatives comply with the applicable provisions of Rules 45(b), 46(b), and 47-54, inclusive, of the Commission's General Rules of Practice (49 CFR 1100.45(b), 1100.46(b), and 1100.47-1100.54, inclusive) relating to modified procedure, except that the original and one copy of any statement made pursuant to Rule 51 (49 CFR 1100.51) shall be filed with the Commission.

It is further ordered, That December 24, 1973, be, and it is hereby, fixed as the date on or before which petitioners may submit verified statements in support of their petition.

It is further ordered, That January 23, 1974, be, and it is hereby, fixed as the date on or before which protestants may file verified statements in opposition to the petition and February 12, 1974, be, and it is hereby fixed as the date on or before which petitioners may file verified statements in reply.

It is further ordered, That a copy of each statement filed with the Commission shall be served on all parties otherwise entitled to be served with a notice of hearing in the District Court on a petition by petitioners for allowance of compensation and expense; and the statement filed with the Commission shall so certify.

And it is further ordered, That, except for good cause shown, preliminary motions and requests for cross-examination of witnesses or for other relief will not be acted upon prior to the date on or before which all verified statements are required to be filed.

Dated at Washington, D.C., this 9th day of November, 1973.

By the Commission, Commissioner Tuggle.

(SEAL)

ROBERT L. OSWALD
Secretary

BEFORE THE INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
RECEIVED
DEC 26 1973
ADMINISTRATIVE SERVICES
MAIL BRANCH

Finance Docket No. 21669

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY REORGANIZATION
PETITION OF TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO SUCCESSOR INDENTURE TRUSTEE FOR INTERIM COMPENSATION

FILE IN DOCKET

Lawrence W. Iannotti, being first duly sworn, deposes and says:

1. I am a partner in the firm of Tyler, Cooper, Grant, Bowerman & Keefe (hereinafter referred to as "Petitioner"), counsel to Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage dated July 1, 1947 (hereinafter referred to as the "Successor Trustee").

2. Due to secretarial error, the number of hours spent by Petitioner in the representation of the Successor Trustee as reflected on Page 2, Paragraph 4 of the Petition for Order No. 691 filed in the United States District Court for the District of Connecticut in No. 30226, In the Matter of the New York, New Haven & Hartford Railroad, Debtor (hereinafter referred to as the "Petition") forwarded to the Commission, and on Page 6, the first page of Appendix A to said Petition, is incorrect. The figure should not be 772 hours, but 855 hours. Of that figure, 411 hours were spent by partners and 444 were spent by

associates. The subtotals of hours spent under subheadings A-E in Appendix A of said Petition should be as follows:

A - 162 hours

B - 370 hours

C - 188 hours

D - 66 hours

E - 69 hours (instead of 57 hours as should have been reflected under this heading).

Under Petitioner's bookkeeping system, the dollar equivalent of time expended is added on a monthly basis, but the number of actual hours is not. Given the number of hours involved, the size of the error--roughly 10% of the hours expended--was not large enough to indicate immediately that an error had been made. Since the dollar amount was fixed, the adjustment in hours does not affect the total amount requested by Petitioners as interim compensation.

3. Appendix A to the aforesaid Petition, which Petition with Appendices has been sent to all parties of record in No. 30226 in the United States District Court for the District of Connecticut, In the Matter of New York, New Haven & Hartford Railroad Company, Debtor, as required by the Commission's order in these proceedings, Service Date November 15, 1973, describes the nature of the services rendered by Petitioner, the benefit to the estate, the Peti-

tioner's responsibilities, and the time spent by Petitioners on the matters specified in said Appendix.

4. In accordance with the Commission's decision rendered in Finance Docket No. 21669 regarding the compensation to be paid Gratz, Tate, Spiegel, Ervin and Ruthrauff, 342 ICC 632, 639 (April 20, 1973), information regarding the nature and complexity of the work performed by Petitioner, the need for the services, the relative importance of the work in relation to the other needs of the Estate, the Petitioner's fixed and variable overhead expenses, and the Petitioner's hourly rates are herein set forth.

5. The majority of the time spent by Petitioner during the period July 1, 1971 through December 31, 1972 was devoted to litigation defending the equitable lien and constructive trust imposed by the New Haven Reorganization Court on the former New Haven assets conveyed to the Penn Central Railroad. This litigation involved novel and difficult questions regarding the overlap of jurisdiction between two reorganization courts, each of which has exclusive jurisdiction over the assets of its debtor. The litigation was conducted simultaneously in the Second and Third Circuits and led to Petitioner's filing a petition for a writ of certiorari to the Second Circuit and a supporting response to a petition for a writ of certiorari to the Third Circuit in the United States Supreme Court. The

substantive issues raised by this litigation were virtually questions of first impression. The procedural problems were equally complex since the litigation was occurring in two judicial circuits simultaneously, and issues of res judicata and collateral estoppel were continually being raised. The other issues dealt with during the eighteen month period covered by the Petition involved significant sums of money potentially available to the New Haven estate and required constant attention to assure that the rights of the New Haven estate under the equitable lien and constructive trust were protected and that any settlements or proposed sales would adequately compensate or protect the estate.

6. The services described above and in Appendix A to the Petition were required to be rendered by the Petitioner. The Petitioner represents the claimants with the largest claim on the New Haven estate, namely the class consisting of the former New Haven Railroad's First Mortgage Bondholders. Following the filing of a petition under Section 77 of the Bankruptcy Act by the Penn Central Transportation Company, the above-mentioned equitable lien and constructive trust constituted a major asset of the New Haven estate, and strenuous defense thereof was required in order to ensure that the Successor Trustee's trust beneficiaries would have some equity in the New Haven estate.

During the period covered by the Petition, the Successor Trustee did not attempt to become a party in the Penn Central reorganization, but instead relied upon counsel to the New Haven Trustee to represent the interests of the entire New Haven estate. Though this has entailed the expenditure of time to review those aspects of the Penn Central proceeding relevant to the New Haven estate, it was the most economical means of representing the New Haven estate in the Penn Central Reorganization Court.

7. As described in Paragraph 6 hereof, protection of the New Haven estate's equitable lien and constructive trust was of the highest importance compared to the other needs of the New Haven estate since it involved protection of the New Haven estate's major asset. The other work performed by Petitioner--review of matters before the Penn Central Reorganization Court and active involvement in matters before the New Haven Reorganization Court--was necessary to protect the estate and the Successor Trustee's beneficiaries.

8. During calendar year 1971, the Petitioner's fixed overhead, including associates' salaries, was 46% of the Petitioner's gross income. During calendar year 1972, the corresponding figure was 42%. Omitting associates' salaries, the percentage of fixed overhead to gross income was approximately 33% and 33% in calendar years 1971 and 1972

respectively.

9. The work performed by partners is being charged at a rate of $60 an hour which is consistent with rates charged for comparable services by other firms appearing before this Commission. The rates being charged for time spent by associates is in a range between $30 an hour and $50 an hour, with the majority being at the lower of the two figures. This figure is also consistent with charges for associates' time by other legal firms for comparable services. These charges are also consistent with those charged by law firms in the State of Connecticut. Of the two lawyers with primary responsibility for the matters covered by the Petition, the time spent in representation of the Successor Trustee as a percentage of total billable time was 24% of the partner's time and 18% of the associate's time.

10. A detailed breakdown of Petitioner's variable overhead expenses is given in Exhibit 1 to this verified statement.

11. Paragraphs 2-10 of this verified statement, Exhibit 1 hereto, and the material contained in the Petition constitute the facts upon which Petitioner relies for its interim compensation. Petitioner reserves the right to submit legal memoranda, if necessary, to support its claim that it is legally entitled to interim compensation

at the present time as indicated in Paragraph 7 of the Petition. This paragraph is intended to satisfy the requirements of Rule 49(a) of the Commission's Rules of Practice, 49 C.F.R. §1100.49(a).

12. As required by Rule 51 of the Commission's Rules of Practice, 49 C.F.R. §1100.51, this verified statement with Exhibit, the Petition, and Petitioner's records as relevant are the evidence on which Petitioner relies in this proceeding.

13. As required by Rule 250(d)(1) of the Commission's Rules of Practice, 49 C.F.R. §1100.250(d)(1), Petitioner hereby avers that its Petition for Interim Compensation should not have any effect, adverse or beneficial, on the quality of the human environment.

Dated at New Haven, Connecticut, this 20th day of December, 1973.

TYLER, COOPER, GRANT, BOWERMAN & KEEFE

By Lawrence W. Iannotti

Lawrence W. Iannotti, A Partner
205 Church Street
New Haven, Connecticut 06509

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STATE OF CONNECTICUT)
COUNTY OF NEW HAVEN) ss.: New Haven; December 20, 1973

Lawrence W. Iannotti, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Lawrence W. Iannotti

Subscribed and sworn to before me this 20th day of December, 1973.

Notary Public of the
State of Connecticut

My Commission Expires
March 31, 1977.

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 21669

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY REORGANIZATION (COMPENSATION-TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO SUCCESSOR INDENTURE TRUSTEE)

Decided February 5, 1975

Setting of maximum limits of allowance for interim compensation for services rendered and reimbursement for expenses incurred by certain counsel for successor indenture trustees found not justified on the present record.

Donald F. Keefe for petitioner.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, O'NEAL, AND CLAPP

BY DIVISION 3:

The modified procedure has been followed and the matter has been assigned to division 3 for disposition.

By petition filed in the United States District Court for the District of Connecticut in proceeding No. 30226, pending therein for the reorganization of the New York, New Haven and Hartford Railroad Company, debtor, Tyler, Cooper, Grant, Bowerman & Keefe, counsel to Lawrence W. Iannotti, Successor Trustee under the debtor's First and Refunding Mortgage dated July 1, 1947, requests that the court allow them interim compensation and reimbursement of expenses for the period July 1, 1971, through December 31, 1972, within such maximum limits as may be approved as reasonable by the Interstate Commerce Commission for services for and on behalf of the Successor Trustee of the debtor's First and Refunding Mortgage. The Reorganization Court by Order No. 691 dated March 27, 1973, directed that the petition be transmitted by the clerk of the court to the Interstate Commerce Commission for a determination of the maximum limits within which allowances for interim compensation for services rendered

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and reimbursement of expenses incurred during the involved period may be made to petitioner.

By order dated November 9, 1973, the matter was designated for handling under the Commission's modified procedure as described in the Commission's General Rules of Practice (49 CFR 1100.45(b), 1100.46(b), and 1100.47-1100.54). A verified statement in support of the pending request for interim compensation and reimbursement of expenses supplementing the originally filed petition was filed by petitioner on December 26, 1973. No other pleadings were submitted pursuant to the Commission's order of November 9, 1973, and the petition stands unopposed.

Petitioner was appointed counsel to Lawrence W. Iannotti, Successor Trustee under the debtor's First and Refunding Mortgage dated July 1, 1947, by Reorganization Court Order No. 655 dated September 3, 1971. During the period July 1, 1971, through December 31, 1972, petitioner through three of its attorneys rendered 855 hours[1] of professional services on behalf of the Successor Trustee for which it seeks interim compensation in an amount not less than $42,450 and reimbursement of expenses in the amount of $1,850.91.

The services rendered were described by petitioner as falling into five general categories:

A. Matters relating generally to the debtor's reorganization and the duties of the Successor Trustee (162 hours).

Services included initial review of the First and Refunding Mortgage and Indenture; review of pertinent documents relating to debtor's reorganization; consultations with counsel for resigning Indenture Trustee; appearances before the Reorganization Court with regard to funds held by the Manufacturers Hanover Trust as Indenture Trustee, the sale of real property in New London, Conn., to the New London Redevelopment Agency, various settlement proposals involving the Penn Central Trustees, and various petitions submitted by the New Haven Trustee for compensation and other relief; and various conferences with the New Haven Trustee, his counsel, and counsel for other New Haven creditor groups regarding the New Haven Estate.

[1]The originally filed petition indicated that 772 hours of professional services (including 380 hours provided by Lawrence W. Iannotti, one of petitioner's partners) had been rendered. Petitioner's subsequently filed verified statement revealed a corrected total of 855 hours. Petitioner described the error as clerical and noted that the dollar amount sought was not affected.

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B. Matters relating to the appeal taken by the Trustees of the property of the Penn Central Transportation Company in the United States Court of Appeals for the Second Circuit (370 hours).

Services were related to the preparation of a brief and participation in oral argument before the Second Circuit in opposition to the legal challenge raised by the Penn Central Trustees to the equitable lien and constructive trust imposed by the New Haven Reorganization Court on former New Haven assets in the possession of the Penn Central Trustees.

C. Matters relating to the appeals to the United States Court of Appeals for the Third Circuit taken by various New Haven interests from several orders entered by the Penn Central Reorganization Court (188 hours).

Services included filing an appeal to the Third Circuit to the order of the Penn Central Reorganization Court reported in 337 F. Supp. 779 which granted to the New Haven Trustee a tentative lien of indeterminate amount on all property formerly owned by the New Haven Estate in the possession of the Penn Central Trustees; responding to the challenge of the Penn Central Trustees to petitioner's standing to file the appeal; preparation and filing of an independent brief and reply brief on the merits of the case; preparation of a response for submission to the Supreme Court in support of a petition filed by the New Haven Trustee for a writ of certiorari before judgment. The petition for a writ of certiorari was denied by the Supreme Court. Thereafter petitioner and the other New Haven interests voluntarily moved for dismissal of their appeals pending before the Third Circuit.

D. Matters relating to the preparation and filing of a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit filed in the United States Supreme Court and a response to the petition for a writ of certiorari before judgment to the United States Court of Appeals for the Third Circuit filed by the New Haven Trustee (66 hours).

Services consisted of preparation and filing in the Supreme Court of a writ of certiorari directed at the adverse opinion issued by the Second Circuit with regard to the matters considered in B above and the filing of a supporting response to the petition of the New Haven Trustee for a writ of certiorari before judgment directed to the Third Circuit referred to in C above.

E. Matters related to the reorganization of the Penn Central Transportation Company under section 77 of the Bankruptcy Act (69 hours).

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Services included advising Successor Trustee on matters before the Penn Central Reorganization Court; consultations with the New Haven Trustee, counsel for the New Haven Trustee, and counsel for other New Haven creditor interests regarding interim reports and reorganization plan proposals of the Penn Central Trustees, a proposed sale of the so-called Grand Central Terminal properties, and proposed refinancing of notes of Penn Central International, N. V.; review of settlement proposals between the New Haven Trustee and the Penn Central Trustees regarding disposition of vehicular bridges and reservation of easements in Massachusetts; and appearances before the New Haven Reorganization Court with regard to these matters.

The variable expenses incurred by petitioner for which reimbursement is sought can be summarized as follows:

Successor Trustee Bond[1]	$80.00
Court filing fees	220.00
Travel	256.38
Xerox & photostats	380.85
Printing—petition & response	328.73
Printing—reports of New Haven Trustee sent to First Mortgage Bondholders	243.30
Postage	46.23
Secretarial overtime	98.12
Telephone	197.30
	1,850.91

[1]The instant petition was filed by and on behalf of *counsel* to the Successor Indenture Trustee. Presumably because Lawrence W. Iannotti, Successor Indenture Trustee, is a member of petitioner's law firm, the services and overhead expenses of Successor Indenture Trustee are embraced within the pending petition.

Petitioner as counsel for the Successor Indenture Trustee represents that class of creditors[2] with the largest claim against the New Haven Estate. The largest asset of the New Haven Estate consists of its claim against Penn Central. Petitioner asserts that the services performed for which it here seeks compensation were necessary to protect the interests of the New Haven Estate and the First Mortgage Bondholders. It contends that its active involvement in matters before the New Haven Reorganization Court and its efforts to protect the assets of the New Haven Estate are vital to a

[2]The New Haven First Mortgage Bondholders.

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successful completion of the New Haven reorganization and of such substantial benefit to the Estate as to justify the interim compensation requested.

Discussion and Conclusions

The pending request for interim compensation and expense reimbursement allowances was filed pursuant to section 77(c) (12) of the Bankruptcy Act (11 U.S.C. 205(c)(12)) which provides:

> (12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, despositaries and such assistants as the Commission with the approval of the judge may especially employ. *** The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subsection (c) ***.

Traditionally this Commission was not called upon to make a determination as to maximum limits of allowances under section 77(c)(12) until the reorganization proceeding had advanced to the point where a plan of reorganization had been approved. Compare *Boston & P. R. Corp. Reorganization*, 333 I.C.C. 614; *New York, N. H. & H. R. Co. Reorganization*, 247 I.C.C. 677; *Missouri Pac. R. Co. Reorganization*, 244 I.C.C. 69; *Erie R. Co. Reorganization*, 240 I.C.C. 673; and *Chicago, M., St. P. & P. R. Co. Reorganization*, 242 I.C.C. 113. The reason for this practice was that the essential elements for determining allowances under section 77(c)(12) are the benefits derived by the estate from the services rendered or a significant contribution to the working out of a plan of reorganization, *Warren* v. *Palmer*, 132 F. 2d 665 (2d Cir. 1942), factors which can properly be evaluated only at the conclusion of a reorganization, *In Re Imperial "400" National, Inc.*, 432 F. 2d 232, 235 (3d Cir. 1970). Petitioner, however, relying in part upon the opinion of the Reorganization Court in this proceeding dated July 28, 1969, *In Re New York, New Haven & Hartford Railroad Co.*, 304 F. Supp. 1121, which held that counsel for Indenture Trustees, if they deem it advisable, may apply for interim allowances under

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section 77(c)12),[3] has asserted its claim for interim allowances at this time.

It must be noted that the opinion of the New Haven Reorganization Court upon which petitioner here relies was a memorandum of decision on a Plan of Reorganization certified to the court by this Commission on December 2, 1968. The Court in recognition of the significant contribution to the reorganization proceedings made by petitioner's *predecessor* stressed the need for the relatively equal treatment, so far as that is possible, of counsel whose compensation is subject to section 77(c)(12) with counsel and special counsel for the Trustees whose compensation is subject to section 77(c)(2) of the Bankruptcy Act.[4] Specifically the Court stated at page 1127:

> Counsel for the trustees for the bond issues and for the First Mortgage 4% Bondholders Committee are, however, subject to the provisions of (c)(12). They have devoted an enormous amount of time and energy to the case, and the high order of their professional competence has made a very significant contribution to the reorganization proceedings. *Present* counsel for the First Mortgage Bonds and counsel for the Trustee for the Income Bonds have participated since the filing of the petition on July 7, 1961. *** The Indenture Trustees, their counsel and others who are entitled *at this time* to reimbursement of expenses and to compensation may, if counsel deem it advisable, apply for interim allowances, and the court will entertain such petitions. [Emphasis added.]

It would appear that the Court was referring to the services rendered by predecessors to petitioner whose efforts contributed substantially to the development of the plan of reorganization then under consideration by the Court. From the language of the opinion it does not appear that the Court was necessarily extending a general invitation to the then counsel to the Indenture Trustees or their successors to seek interim allowances for compensation and reimbursement of expenses for services which may subsequently be rendered by them. Indeed, in July 1969, at the time the opinion was rendered there was every reason to believe that the New Haven Reorganization proceeding was in its concluding stages. It was not until the initiation of section 77 reorganization proceedings by the Penn Central Transportation Company some 11 months later[5] that the primary obstacle to the consummation of the plan of

[3] 304 F. Supp. 1127.

[4] 304 F. Supp. 1126.

[5] On June 21, 1970, Penn Central Transportation Company filed a petition for reorganization with the United States District Court for the Eastern District of Pennsylvania.

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reorganization then under consideration by the New Haven Reorganization Court formally manifested itself. Nevertheless the Commission is prepared to consider the herein petition based on the evidence presented.

The services for which petitioner here seeks interim compensation were rendered between July 1, 1971, and December 31, 1972, a period which for the most part occurred more than 2 years after the Reorganization Court opinion of July 29, 1969. As demonstrated and recognized in petitioner's pleadings, petitioner's services were subsequent in point of time to the development of a plan of reorganization for New Haven approved by this Commission. The fundamental question presented by the instant petition is whether and to what extent petitioner's services in this continuing reorganization proceeding clearly have been shown to be of benefit to New Haven's estate at this point in time.

All of petitioner's services were rendered in its capacity as representative of the Successor Indenture Trustee. They are claimed to have served two basic purposes—(a) representing the interest of the Successor Indenture Trustee and the class of creditors represented by him (certain of the services described in category A), and (b) protecting the assets of the New Haven Estate (services described in categories B, C, D, and E and certain of the services described in category A). While we accept the fact that petitioner's efforts in representing the Successor Indenture Trustee are of benefit to the Successor Indenture Trustee, such services in and of themselves should not be presumed to be of benefit to the general estate. As set forth on the record before us, the benefits which have accrued to the general estate from petitioner's activities on behalf of the Successor Indenture Trustee are not manifest at this stage of the reorganization proceedings.

The burden of proof is on petitioner to show that his services benefited the estate and did not duplicate the effort of the trustee and his counsel, since the estate should pay only once for a service. Such petitioner should segregate administrative and routine services for indenture trustee over which the Commission does not have jurisdiction.

Protecting the assets of a bankrupt estate is primarily the responsibility of the court appointed trustee. Petitioner's efforts in this regard, which for the most part were directed at protecting the equitable lien and constructive trust imposed on behalf of the New Haven Trustee, were supplemental to or duplicative of efforts expended by or undertaken at the direction of the New Haven

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Trustee. During the period covered by the petition pending before us, the New Haven Trustee, his counsel, special counsel, and staff directed their principal efforts to the careful review of and active participation in the Penn Central reorganization proceedings.[6] The involvement of the New Haven Trustee in the Penn Central Reorganization was premised not only on ownership by the New Haven Estate of debt and equity securities of Penn Central but also on the basis of his responsibility as Trustee representative of the New Haven bondholders and administration creditors.[7] In the pursuit of his responsibilities the New Haven Trustee and his representatives were actively involved in all of those matters described by petitioner on which the pending request for interim compensation and reimbursement of expenses is based.[8]

In addition to the personal involvement of New Haven Trustee Richard Joyce Smith and Counsel for the Trustee James Wm. Moore, the Trustee found it necessary to utilize the services of special counsel to assist in the disposition of those matters referred to by petitioner. For the period July 1, 1971, through December 31, 1972, Sullivan & Worcester, special counsel to the Trustee, rendered 7,990.25 hours of professional services, including services encompassing those matters which are the subject of this petition, through 24 of its attorneys, for which compensation in the amount of $413,101.25 was sought and authorized.[9] Similarly, Gratz, Tate, Spiegel, Ervin & Ruthrauff, special counsel to the Trustee, rendered professional services as Philadelphia counsel encompassing matters referred to by petitioner for the period June 16, 1971, through December 15, 1972, during which 1,309.6 hours of service were rendered by 3 of its attorneys and for which compensation in the amount of $58,112 was sought and authorized.[10] In view of this substantial commitment of talent and

[6] *Report of the Trustee on the Administration of the Estate (New Haven) for the year 1971*, p. 8990; *Report of the Trustee on the Administration of the Estate for the year 1972*, pp 9300, 9304, 9308-9309; *New York, N. H. and H. R. Co. Reorganization*, 342 I.C.C. 632, 640-641.

[7] See Petition for Order No. 697, Appendix A p. 9, filed by the New Haven Trustee with the New Haven Reorganization Court June 28, 1973.

[8] See *Report of the Trustee on the Administration of the Estate for the year 1971*, filed May 4, 1972, and *Report of the Trustee on the Administration of the Estate for the year 1972*, filed April 19, 1973.

[9] For a description of the services rendered by Sullivan & Worcester during this period see Petition for Order No. 656, Petition for Order No. 680, and Petition for Order No. 692 submitted to the New Haven Reorganization Court.

[10] For a description of the services rendered by Gratz, Tate, Spiegel, Ervin & Ruthrauff (formerly known as Tate & Ervin) during this period see Petition for Order No. 656, Petition for Order No. 667, Petition for Order No. 674, and Petition for Order No. 690 submitted to the New Haven Reorganization Court.

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resources by the Trustee to deal with matters for which petitioner here seeks compensation, the necessity for petitioner's involvement with these matters is seriously obscured.

We are unable to discern at this stage of the reorganization proceedings the benefits accruing to the estate from the services rendered by petitioner. The estate is under no obligation to pay for unsolicited services which substantially duplicate efforts undertaken by its duly authorized representatives, particularly in the absence of convincing justification for this overlapping of services. As was stated by the court in *In Re New York, N.H. & H.R. Co.*, 46 F. Supp. 214 (D. Conn. 1942), at page 229:

> In the litigation over the administration accounts, counsel for the New Haven trustees were definitely carrying the primary responsibility and I must hold that all assistance furnished them by others is not compensable out of the estate in the absence of proofs which satisfy me that sme benefit thereby resulted.

Within that general area of activity in which petitioner provided its services, we have no reason to believe that the New Haven Trustee could not adequately protect the interests of all claimants and creditors of the estate. *In Re Penn Central Transportation Company*, 455 F. 2d 811, 817 (3d Cir. 1972).

The normal rule in proceedings in equity and bankruptcy simpliciter is that attorneys representing creditors, security holders, or stockholders must look for compensation from their clients rather than to the general estate. *In Re Chicago, M., St. P. & P.R. Co.*, 138 F. 2d 433, 436 (7th Cir. 1943). The basis for the rule is that the estate is ordinarily represented by a receiver or trustee whose duty and responsibility it is to protect the estate. When it becomes necessary for others to institute proceedings or undertake other appropriate action in order to recover assets or prevent waste, then such individuals are entitled to compensation and reimbursement of expenses as though their actions had been at the direction of the receiver or trustee. *In Re Paramount Publix Corporation*, 85 F. 2d 588, 590-591 (2d Cir. 1936). On the record before us no such situation exists in this proceeding where in those areas in which petitioner's services were performed the Trustee appears to have acted with particular care and diligence. Of course, all parties to a reorganization proceeding are entitled to be heard, and those unwilling to rely on counsel appointed by the court can justly be expected to provide the compensation for the independent activity of their counsel. *In Re New York, N.H. & H. R.Co., supra*, p. 222.

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It should be emphasized that the rules governing allowances to creditors' committee counsel differs from that applicable for the Trustee and his counsel, the proper measure of compensation for creditors' committee counsel being the benefits derived by the estate from their services. In *Re McGann Mfg. Co.*, 188 F. 2d 110, 112 (3d Cir. 1951). From our view of the current status of the New Haven Reorganization proceeding, the benefits accruing to the estate from petitoner's services at this time are not apparent. At this point in the development of the New Haven Reorganization we must conclude that the nature and extent of the services rendered by petitioner and the benefits to the New Haven Estate accruing therefrom support the fixing of a maximum limit of interim compensation to be paid out of debtor's estate to Tyler, Cooper, Grant, Bowerman & Keefe, counsel to Lawrence W. Iannotti, Successor Trustee under the debtor's First and Refunding Mortgage dated July 1, 1947, at zero. *In Re Chicago, M. St. P. & P.R. Co., supra.*

With regard to petitioner's request for an allowance for reimbursement of variable expenses incurred during the involved period, except for the $80 Successor Trustee Bond expense and the $243.30 expense for the printing of New Haven Trustee reports, each item of expense appears to be related to those professional services rendered by petitioner for which no interim compensation has here been authorized. At such time as it becomes apparent that payment of compensation for these professional services should be provided by the New Haven Estate, reimbursement for the related variable expenses incurred in the amount of $1,527.61 may be authorized. The $80 bond expense represents an expense properly incurred by the Successor Indenture Trustee, an individual not formally a party to this petition. Upon the filing of an appropriate petition for reimbursement by the Successor Indenture Trustee, authorization of an allowance for reimbursement may be approved. We can perceive of no reason for imposing upon the New Haven Estate the burden of underwriting the cost incurred by petitioner of printing the New Haven Trustee reports which petitioner subsequently forwarded to First Mortgage Bondholders. While the reports may have been useful to the First Mortgage Bondholders, no corresponding benefit inured to the general estate. The incurring of this printing expense was unnecessary, and petitioner's request for reimbursement of its cost is denied.

We find, in view of the nature and extent of services rendered by petitioner, as counsel to Lawrence W. Iannotti, Successor Trustee,

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under the debtor's First and Refunding Mortgage dated July 1, 1947, the contributive value thereof, and the benefits accruing therefrom to the debtor's estate, that the reasonable maximum limit of interim compensation to be allowed out of debtor's estate to Tyler, Cooper, Grant, Bowerman & Keefe for services rendered and reimbursement for variable expenses incurred during the period July 1, 1971, through December 31, 1972, be fixed at zero.

We further find that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

An appropriate order will be entered.

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ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, held at its office in Washington, D.C., on the 5th day of February 1975.

Finance Docket No. 21669

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY REORGANIZATION (COMPENSATION-TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO SUCCESSOR INDENTURE TRUSTEE)

Investigation of the matters and things involved in this proceeding having been made, and the division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof.

It is ordered, That the maximum limits within which the United States District Court for the District of Connecticut may allow Tyler, Cooper, Grant, Bowerman & Keefe, counsel to Lawrence W. Iannotti, Successor Trustee under the debtor's First and Refunding Mortgage dated July 1, 1971, for interim compensation and reimbursement for variable expenses incurred during the period July 1, 1971, through December 31, 1972, out of the estate of The New York, New Haven and Hartford Railroad Company, debtor, be, and it is hereby, set at zero.

By the Commission, division 3.

ROBERT L. OSWALD,

Secretary.

(SEAL)

UNITED STATES OF AMERICA

FILED

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APR 30 1975

INTERSTATE
COMMERCE COMMISSION

In The Matter Of THE NEW YORK, NEW HAVEN, AND HARTFORD RAILROAD COMPANY REORGANIZATION (COMPENSATION-TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO SUCCESSOR INDENTURE TRUSTEE)	Finance Docket No. 21669

PETITION FOR RECONSIDERATION AND REHEARING

Pursuant to Rules 101 (b) and (d) of the Commission's Rules of Practice, Tyler, Cooper, Grant, Bowerman & Keefe ("Petitioner"), counsel to Lawrence W. Iannotti, Successor Indenture Trustee under Debtor's First and Refunding Mortgage dated as of July 1, 1947, ("the Successor Trustee") hereby files its Petition for Reconsideration and Rehearing of the Report of the Commission, Division 3, decided February 5, 1975 and served February 26, 1975, 348 I.C.C. 31 et seq. ("the Report"). This petition is timely filed, the Commission having granted an extension of time until April 30, 1975 for Petitioner to file. This petition should be read in conjunction with the Brief attached hereto, which lists legal points and authorities in support of certain of the numbered exceptions listed hereafter as required by Rules 101(d) and 96(a) of the Commission's Rules of Practice.

Attached hereto as Exhibit 1 is an affidavit of Lawrence W. Iannotti, further describing the benefits of Petitioner's activities to the Debtor's estate and, as Exhibit 2, a reproduction of certain provisions of the Debtor's First and Refunding Mortgage dated as of July 1, 1947, which is on file with this Commission. Such evidence was not previously adduced because Petitioner was not aware, prior to the issuance of the Report, that the benefit of its services to the Debtor's estate was in doubt or that there was any question as to whether Petitioner had acted in any capacity other than as a fiduciary obligated to act. As requested by the Report, Petitioner states that matters which might be classified as routine and administrative services by the Successor Trustee equaled 49 hours or about $3,000 of services. Such services are listed under heading A at 348 I.C.C. at 32, and are the first three categories of services there listed.

In support of this Petition for Reconsideration and Rehearing, Petitioner takes exception to the following statements of fact, matters of law or conclusions contained in the Report:

1. The Report concluded the benefits of the Petitioner's services to the Debtor's estate are not presently apparent. Such conclusions are erroneous for the following reasons:

(a) During 1971-1972 and at the present stage of the New Haven reorganization, perhaps the most important

issue has been the protection of the New Haven's claim against The Penn Central Transportation Company ("Penn Central"), also in reorganization. As discussed below in greater detail, Petitioner's services described under headings B-D at 348 I.C.C. at 33 were necessary and beneficial to the attempted consummation of Step I of the New Haven's plan of reorganization. As noted in the Report, 348 I.C.C. at 34, Petitioner represents "that class of creditors with the largest claim against the New Haven Estate". As stated in The Report of the Trustee on the Administration of the Estate of The New York, New Haven, and Hartford Railroad Company for the Year 1974, filed February 21, 1975 with the United States District Court for the District of Connecticut, at 10075:

> "... It must be emphasized that the $24,923,351 of assets of the Estate actually on hand are deficient by approximately $20,939,644 in meeting the amount of the claims ahead of the First Mortgage Bonds. Thus, only by actually realizing on the New Haven Trustee's claim against the Penn Central Estate can assets be made available to cover the claims senior to the New Haven Bondholders and to satisfy the latter claims in whole or in part."

If the full amount owing is paid, only the First Mortgage Bondholders, in all likelihood, will benefit. Although the aforesaid litigation placed the First Mortgage Bondholders primarily at risk, the attempts by the Penn Central Trustees to reduce the New Haven's claim to that of an unsecured creditor imperiled the entire estate and the New Haven reorganization. A vigorous response by those whose interests

would be affected was reasonable and proper under the circumstances and, because it ensured complete coverage of all relevant issues and protection of the New Haven estate, beneficial to it. The Report has in effect equated any joint undertaking with duplicative effort, a position which may be disruptive of reorganization proceedings, which varies from the thrust of existing case law, and which is unfair and unworkable. Such efforts were not unnecessarily duplicative in light of the importance of the litigation and its potential effect on the entire New Haven reorganization.

(b) In a matter of such importance to the First Mortgage Bondholders, the Successor Trustee and Petitioner as fiduciaries could not delegate all responsibility for protection of the First Mortgage Bondholders to other counsel and parties. Such failure to act might have constituted negligence. At the time, active participation was imperative. It is only after the event that one can estimate the benefit, if even benefit can be quantified, of such services or judge the extent to which the Successor Trustee and Petitioner could have relied upon the New Haven Trustee and his counsel and not have been guilty of any breach of fiduciary duty. Unless Petitioner and others similarly situated are given reasonable discretion to act on behalf of their beneficiaries, with some reasonable assurance of payment for services, the Commission, as a matter of law, will put counsel to the choice between possible liability to beneficiaries if they

fail to act or the risk of no payment if they do. Petitioning a reorganization court for permission not to act merely transfers the burden of responsibility, is inconsistent with an adversary system of justice, and does not resolve the central issue here, namely whether the Commission intends to encourage or discourage responsible, reasonable creditor participation in railroad reorganizations and believes such representation is in an estate's interests.

(c) Petitioner and the Successor Trustee are court-appointed. Both were appointed because the New Haven Reorganization Court believed it was vital and beneficial to the Debtor's estate that the First Mortgage Bondholders continue to be represented by independent counsel and trustee. As noted hereafter, both were appointed because the predecessor Trustee had a conflict of interest with the New Haven's claim against the Penn Central. The fact of such appointment in the circumstances is prima facie evidence of benefit which the Commission has failed to consider.

(d) The Commission has not taken into account the benefit to the Debtor's estate of having adverse parties continuously present and reasonably active to assure the Reorganization Court, the Commission, the Trustee and his counsel that the actions they take are in the best interests of the Debtor's estate and that such interests are aggressively represented. Such a watchdog role requires occasionally active participation by parties such as indenture trustees.

The watchdog role requires, at the very least, review of pending petitions and motions and appearances in court on important matters. Such reasonable activities must be fairly compensated if a reorganization is not to become an ex parte proceeding. The Report apparently failed to take this type of benefit into account because no dollar figure can be assigned to it. But benefit can be intangible as well as tangible. Within reasonable limits -- and considering the amount of services involved here and the Successor Trustee's position in the New Haven reorganization, this proceeding does not involve testing such limits -- an estate benefits from the input of different, affected adverse interests. The axiom that such input is beneficial is fundamental to an adversary system of justice. If parties are effective as watchdogs, they will deter waste and erosion; as they become more effective, benefit becomes less visible and tangible because the incidence of waste and erosion decreases. But the benefit, though intangible, is still there. Thus, the benefit of surveillance inures to the Debtor's estate and not to any single class of creditors. Petitioner's activities in this respect were minimal and reasonable, and should be compensated as requested.

(e) The benefits from Petitioner's efforts which are, therefore, presently apparent are: vigorous participation in litigation protecting the major claim of the Debtor's estate, thereby assuring that all issues would be raised and

pursued; action as a watchdog to insure that actions taken by the Reorganization Court, the Commission and The New Haven Trustee were in the best interests of the Debtor's estate; aid in attempting to complete Step I of the New Haven's plan of reorganization; and involvement in the New Haven reorganization to the extent reasonably required of a fiduciary. Such benefits require interim compensation in the amount requested.

2. The Report concluded that Petitioner should not be granted interim compensation because its services were "unsolicited services which substantially duplicate efforts undertaken by its [the estate's] duly authorized representatives, particularly in the absence of convincing justification for this overlapping of services." This conclusion is erroneous for the following reasons:

(a) The Petitioner's services were not unsolicited. Petitioner was court-appointed because the predecessor Trustee had a conflict of interest which prevented it from enforcing its and the New Haven's claim against the Penn Central. Such services are not unsolicited because they are provided for in the aforesaid Mortgage and for which the railroad obligated itself to pay.

(b) The amount of duplication, if indeed there was duplication, involved in Petitioner's efforts from the estate's point of view is de minimis. As noted in the Report, 348 I.C.C. at 38, the New Haven Trustee's special

counsel were paid a total of $471,213.25 during the period in question. Petitioner is seeking compensation equal to 9% of that figure. If one includes the Trustee's and his counsel's salary during the same period, the percentage is 6.8%. Thus, the New Haven Trustee and his various counsel received compensation for the same period of between 11 and 16 times the amount sought by Petitioner, a statistic which suggests that Petitioner's involvement as the counsel for "that class of creditor with the largest claim against the New Haven Estate" was not excessive and that eliminates the danger of excessive fees being paid in this proceeding to classes of claimants other than the reorganization Trustee and his counsel, assuming the compensation allowed them has been reasonable.

(c) The legal test for determining the compensability of services is unnecessary duplication, not the rigid test of the Report which would regard any joint effort as uncompensable. Some duplication is always necessary in order for counsel to remain aware of the course of proceedings, to act as a watchdog, and to engage in responsible representation of creditors' interests. The Bankruptcy Act is for the protection of creditors and the Commission's newly developed rule regarding duplication would effectively deter creditor representation, as well as private investment in railroad securities. No meetings among counsel, for example, could ever be held, no matter how beneficial, because only one

counsel could be paid. Such a rule would eventually make railroad reorganizations ex parte, a development totally at variance with Congressional intent in the Bankruptcy Act. Furthermore, by depriving creditors of effective representation necessary to safeguard their property from waste and erosion, the Report's conclusion sanctions a taking of property in violation of the Fifth Amendment to the United States Constitution.

(d) It should be noted that issues before the Penn Central Reorganization Court affecting the New Haven estate, other than those involving the protection of the equitable lien and constructive trust and proceedings in the fall of 1973 regarding various plans to reorganize the Penn Central, are and have been carried out solely by the New Haven Trustee. Petitioner only spent 69 hours in eighteen months on such matters, roughly 4 hours a month or one hour a week, during the period in question.

(e) It should further be noted that Petitioner represents the only indenture trustee whose beneficiaries have a major interest in the New Haven reorganization. The multiplicity of parties with identical interests described in the Commission's decision in The Penn Central Transportation Company Reorganization (Compensation), Finance Docket No. 26241, Service Date February 20, 1975 ("Penn Central (Compensation)") is not present in this case, certainly not at this stage of the New Haven reorganization.

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(f) For these reasons, the necessity for Petitioner's services is not seriously obscured, but was consistent with responsible creditor representation.

3. The Report suggested that Petitioner look to the First Mortgage Bondholders for compensation. The First Mortgage Bondholders are widely scattered, not all of their identities are known and they have been bled white by the New Haven reorganization. The Report's suggestion is simply not practical, lawful, or equitable.

4. The Report suggests that Petitioner was acting as a volunteer. That suggestion is contrary to the Successor Trustee's obligations under the aforesaid Mortgage, his appointment by the Reorganization Court, and the law governing fiduciaries generally. Petitioner has acted solely in the manner of a prudent fiduciary safeguarding the property of his beneficiaries consistent with the fact and circumstances of reorganization.

5. The statement in the Report that Petitioner's activities were not connected with the plan and proceedings in the New Haven reorganization is incorrect. Step I of the Plan contemplated the transfer of the New Haven assets to the Penn Central with the amount and form of consideration to be determined later. Much of Petitioner's activity was necessary to ensure that the New Haven Estate would be paid such consideration and thereby complete Step I.

6. Petitioner notes a reference to creditors' committee counsel at the top of 348 I.C.C. at 40. To the extent that the Report equated the role and compensability of indenture trustee's counsel with that of creditors' committee counsel, it was incorrect.

7. The Report is incorrect as a matter of law because it is arbitrary, capricious, and based entirely on disbelief of Petitioner's representations. There is no evidence before the Commission upon which it can conclude that Petitioner's efforts were not beneficial to the Debtor's estate or unnecessarily duplicative.

8. Since the Report may have been influenced by Penn Central (Compensation), the Commission should note the following similarities and distinctions between the New Haven and Penn Central estates and situations:

(a) At page 27 of Penn Central (Compensation), the Commission noted the length of the Penn Central proceedings and the inequity of requiring counsel for indenture trustees to wait to be paid until the reorganization had concluded. Though Petitioner has only been counsel in these proceedings for four years, the New Haven reorganization is now completing its fourteenth year, and its conclusion will probably depend upon proceedings, under the Regional Rail Reorganization Act of 1973, in the Penn Central reorganization to effect a distribution to the New Haven estate. The likelihood of an early conclusion of all those proceedings is small.

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(b) The test for compensation is different from that in the Report. At page 28 of Penn Central (Compensation), the Commission stated that reasonable expenses are those which benefit the estate or contribute substantially to the working out of a plan of reorganization. Here, as noted above, all of the evidence before the Commission indicates the services rendered by Petitioner benefited the estate and contributed substantially to the working out of a plan of reorganization. The duplication, if any, here is de minimis.

(c) At pages 29 and 32 of Penn Central (Compensation) the Commission noted the precarious financial position of the Penn Central and the need for operating funds. Here, the New Haven estate has a reserve of $7,500,000 for attorneys' fees and administration expenses, of which the present application for payment involves .57%. The New Haven is not a functioning railroad and there is not the same need for operating funds. At page 29, one of the factors mentioned for compensation is "the availability of funds in the estate." That criterion is satisfied here.

(d) On page 29 of Penn Central (Compensation), the Commission noted the factors involved in setting compensation. In this proceeding, the work was difficult and complex, the services were needed at a critical juncture of the New Haven reorganization, the work was of the highest importance in relation to the other needs of the estate, the services benefited the estate by aiding in the attempted completion

of Step I of the plan of reorganization and in carrying out creditors' vital watchdog function, and the Commission is in possession of information regarding the individuals who performed the services.

(e) At page 31 of Penn Central (Compensation), the Commission noted that there were several indenture trustees performing similar services and therefore "the problem of duplication of services is also relevant." At pages 37-38 of Penn Central (Compensation), the Commission appeared to be concerned primarily with the duplication among the indenture trustees. Here, there is only one indenture trustee who performed the services described by Petitioner and under the Penn Central test, the services are compensable.

(f) At page 32, the Commission stated as follows:

> "Furthermore, the Petitioners [the bank-indenture trustees] are all well-known and experienced organizations well aware of the problems of being indenture trustees. Also, petitioners are in a much better position financially to bear the hardship of delayed compensation."

Here, the Successor Trustee is an individual who was appointed because no institution, after a long search, could be found to serve. Neither he nor his law firm is in the same position as the indenture trustees in the Penn Central proceeding and the delay will work a hardship upon them. Both the Successor Trustee and Petitioner were court-appointed and are officers of the Reorganization Court. If they are not

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compensated, the Reorganization Court may be unable to find replacements for them.

(g) At page 33 of Penn Central (Compensation), the Commission remarked that it did not have the relevant provisions of the indenture agreements setting out the duties of the indenture trustees. Attached hereto as Exhibit 2 are the relevant provisions of the aforesaid Mortgage, which should provide the Commission with the information required to determine what the Successor Trustee and his counsel were required to do.

(h) At pages 40-41 of Penn Central (Compensation), the Commission discussed the legislative history underlying Section 77(c)(12) of the Bankruptcy Act and concluded that allowance of compensation might erode the Penn Central estate. That, in light of the reserve for attorneys' fees available in the New Haven reorganization, does not appear a problem, and, in any event, protection of creditors' interests requires some outlay of funds to avoid waivers of creditors' rights and protection against continuing unconstitutional erosion.

(i) At page 41 of Penn Central (Compensation), the Commission was concerned that only a fraction of the creditor interests were seeking an aggregate of over $1,600,000 for one period of interim compensation. Here, there are far fewer parties, the amount of money is considerably less, and the period involved is not merely one year but eighteen

months. The Commission's fear of huge claims is unfounded in this proceeding.

(j) Unlike Penn Central (Compensation) and the Commission's Initial Decision in Central Railroad Co. of New Jersey Reorganization, Finance Docket No. 24535, Service Date March 11, 1975, in the New Haven proceeding the Debtor's Trustee has not opposed the petition for compensation.

(k) To the extent that the Initial Decision in the Central Railroad Co. of New Jersey Reorganization is consistent with that of Penn Central (Compensation), the factors described in subparagraphs (a)-(i) apply with equal force to that decision.

9. WHEREFORE, Petitioner petitions the Commission to reconsider and rehear the Report and award Petitioner interim compensation and variable expenses in the amount requested.

TYLER, COOPER, GRANT, BOWERMAN & KEEFE

By Irving S. Schloss

Irving S. Schloss
205 Church Street
P.O. Box 1936
New Haven, Connecticut 06509

Dated: April 30, 1975

Petitioner's Exhibit 1

UNITED STATES OF AMERICA

BEFORE THE
INTERSTATE COMMERCE COMMISSION

In The Matter Of THE NEW YORK, NEW HAVEN, AND HARTFORD RAILROAD COMPANY REORGANIZATION (COMPENSATION-TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO SUCCESSOR INDENTURE TRUSTEE)	Finance Docket No. 21669

AFFIDAVIT

Lawrence W. Iannotti, being first duly sworn, deposes and says:

1. I am the Successor Trustee under the Debtor's First and Refunding Mortgage dated as of July 1, 1947.

2. I reaffirm without change the information contained in my earlier affidavit dated December 20, 1973, filed in these proceedings.

3. Shortly before I was appointed as Successor Trustee, the New Haven Reorganization Court entered its decision, In re New York, N.H. & H.R.R. Co., 330 F.Supp. 131 (D.Conn. 1971), imposing an equitable lien and constructive trust upon the former New Haven assets in favor of the New Haven estate, and the Penn Central Trustees appealed that decision to the United States Court of Appeals for the Second Circuit.

At the time and at present, sustaining that decision on appeal appeared to spell the difference between recovery of the New Haven estate's claim against the Penn Central Transportation Company and, for all practical purposes, the possible failure of recovery. The issues involved were of first impression and of prime importance to the estate. Though the interests of the First Mortgage Bondholders and the interests of the New Haven estate appeared the same at the outset of the appeal, it was not then possible to determine when and if those interests might diverge. Participation by me as a party and my counsel seemed imperative to protect the New Haven estate and the First Mortgage Bondholders and as a matter of fiduciary obligation under the aforesaid Mortgage. The submission of separate briefs to the Court of Appeals resulted in my counsel's independently arriving at lines of argument and precedents, and was necessary to ensure that the interests of the New Haven estate and therefore the First Mortgage Bondholders would be fully protected. Participation in the subsequent litigation in the Third Circuit, which was not anticipated at the time, was necessary to avoid the consequences of collateral estoppel and res judicata. No litigation since my appointment has been as important and the Commission should note that in none other has my counsel been as actively and independently involved. In all other litigation matters, it has been sufficient for me and my counsel to review the work and activities of

counsel for the New Haven Trustee. The litigation described above was simply too important for me to delegate responsibility to other counsel. For that reason, the work was not unnecessarily duplicative, was required of me as a fiduciary, was consistent with responsible creditor representation and was beneficial to the estate.

4. All of the other services performed by my counsel were necessary for them to function as watchdogs over the New Haven reorganization and the New Haven estate's interests in the Penn Central reorganization. In my opinion, protection of the estate against waste and maximization of the estate's chances of recovery of its claim against the Penn Central Transportation Company are among the most important functions I have, and I have instructed my counsel accordingly. I and my counsel have attempted to do the minimum necessary consistent with our fiduciary obligations.

5. To whatever extent necessary, the Petition for Order No. 691 filed in these proceedings should be deemed to have been amended to be a petition by me as Successor Trustee for reimbursement, my services as Trustee, other than routine and administrative services, being incorporated into the description of legal services rendered by the Petitioner in these proceedings.

6. All of the services described in Petition for Order No. 691 were beneficial to the estate and were not unnecessar-

ily duplicative, and the Commission should award interim compensation and variable expenses in the amounts and for the reasons requested.

Dated at New Haven, Connecticut, this 29th day of April, 1974.

Lawrence W. Iannotti,
As Successor Trustee under the
Debtor's First and Refunding
Mortgage, dated as of July 1, 1947

STATE OF CONNECTICUT)
) ss.: New Haven: April 29, 1975
COUNTY OF NEW HAVEN)

Lawrence W. Iannotti, Successor Trustee as aforesaid, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Lawrence W. Iannotti

Subscribed and sworn to before me this 29th day of April, 1975

Notary Public of the State of
Connecticut

My Commission expires March 31, 1977.

Petitioner's
Exhibit 2

which the Railroad Company may be the maker or which it may have assumed.

SECTION 2. If one or more of the following events, in this Indenture called "events of default", shall happen, that is to say:

(1) If default shall be made in the payment of any installment of interest on any of the Bonds outstanding when and as the same shall become due and payable, as therein expressed, and such default shall continue for ninety days; or

(2) If default shall be made in the payment of the principal of and premium, if any, on any of the Bonds outstanding when the same shall become due and payable either by the terms thereof or otherwise as herein provided; or

(3) If default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of the Railroad Company, contained in the Bonds or in this Indenture or in any indenture supplemental hereto, and such default shall continue for ninety days (or in case of any default under a supplemental indenture for such other time, if any, as may be specified therein) after written notice specifying such default and requiring the same to be remedied shall have been given to the Railroad Company by the Corporate Trustee, which notice may be given by the Corporate Trustee in its discretion, and shall be given on the request of the holders of ten per cent. (10%) in principal amount of the Bonds at the time outstanding; or

(4) If an application be made for the appointment of a receiver of all or any substantial part of the property of the Railroad Company or for a reorganization of the Railroad Company under the provisions of the Bankruptcy Act or any other law, federal or state, or to invoke for the Railroad Company the advantage of any act in aid of debtors, and if either (a) such application be made, consented to, or acquiesced in, by the Railroad Company, or (b) a receiver be appointed by an order or

> decree of a court of competent jurisdiction and such order or decree shall continue unstayed on appeal or otherwise and in effect for a period of sixty days; "

then, and in each and every such case, the Trustees personally or by their agents or attorneys may enter into and upon all or any part of the trust estate, and each and every part thereof, and may exclude the Railroad Company, its agents and servants wholly therefrom; and having and holding the same may use, operate, manage and control the same, and conduct the business thereof, either personally or by their superintendents, managers, agents, servants or attorneys, or by a receiver, in such manner as the Trustees may deem to be to the best advantage of the holders of the Bonds, and upon every such entry the Trustees, at the expense of the trust estate, from time to time, either by purchase, repair or construction, may maintain and restore the equipment, tools and machinery and other property, buildings, bridges and structures erected upon or provided for use in connection with the railways and other premises whereof they shall become possessed as aforesaid, and may insure or keep insured the same in the manner and to the extent which in their judgment shall be appropriate; and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements and useful alterations, additions, betterments and improvements thereto and thereon, and purchase or otherwise secure the use of additional equipment, tools, machinery and other property for use thereon, as to them may seem proper; and, in such case, the Trustees shall have the right to manage the trust estate and to carry on the business and exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise, as the Trustees shall deem best; and shall be entitled to collect and receive all rates, fares, tolls, earnings, incomes, rents, issues, revenues and profits of the same and every part thereof, including the income from the pledged securities, as defined in Section 1 of Article Six hereof; and after deducting the expenses of operating

said railroads and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the trust estate, or any part thereof, as well as just and reasonable compensation for their own services and for the services of all attorneys, counsel, agents, clerks, servants and other employees by them properly engaged and employed, the Trustees shall apply the moneys arising as aforesaid as follows:

> *First,* to the payment of any interest in default on the Bonds, in the order of the maturity of the installments of interest, with interest, to the extent permitted by law, on such overdue installments of interest at the respective rates carried by the Bonds to which such interest pertains, such payments to be made ratably to the persons entitled thereto without discrimination or preference, and, *second* (subject to the provisions of Section 3 of this Article), if any of the Bonds shall have become due, by declaration or otherwise, to the payment of the principal on all Bonds secured hereby, whether due or not, with interest thereon from the date on which the same became due at the respective rates carried by such Bonds, such payments to be made in every instance ratably to the persons entitled thereto without discrimination or preference, and, *third,* if the principal shall not have become due, by declaration or otherwise, on any of the Bonds, to remedy any other defaults of the Railroad Company hereunder in such manner as, in the judgment of the Trustees, shall serve the interests of the holders of the Bonds.

These provisions shall not be deemed to modify the provisions of Section 1 of this Article and are subject thereto.

SECTION 3. In case one or more of the events of default shall have happened and be continuing, the Corporate Trustee may, and, upon the request of the holders of twenty per cent. (20%) in principal amount of the Bonds then outstanding, shall, by written notice

SECTION 12. The purchase money, proceeds and avails of any such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by or for the Trustees, or either of them, under any of the provisions of this Indenture as part of the trust estate or of the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including reasonable compensation to the Trustees, their agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustees in managing and maintaining the trust estate and to the payment of all taxes, assessments or liens prior to the lien of this Indenture, except taxes, assessments and prior liens, if any, subject to which the property shall have been sold.

Second. To the payment of the whole amount then due and unpaid upon the Bonds, either for principal or interest, or for both, with interest on the overdue principal and, to the extent permitted by law, on the overdue installments of interest at the respective rates carried by the Bonds to which such interest pertains, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid for principal and for installments of interest, with interest on the overdue principal and the overdue installments of interest as aforesaid, then to the payment of such principal and unpaid interest ratably, according to the aggregate of such principal and accrued and unpaid interest, without preference or priority of any Bond over any other Bond of the same or of another series or of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, subject, however, to the provisions of Section 1 of this Article.

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

entitled to retain possession and control of, and to collect all interest and dividends or earnings, on any and all of the pledged securities, as defined in Section 1 of Article Six.

SECTION 19. No holder of any Bond or coupon shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Indenture, or for the execution of any trust hereunder, including the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have delivered to the Trustees written notice that one or more of the events of default, which default or defaults shall be specified in such notice, has happened and is continuing, nor unless also the holders of twenty per cent. (20%) in principal amount of the Bonds then outstanding shall have requested the Trustees and shall have afforded to them reasonable opportunity either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in their own name, nor unless one or more holders of Bonds shall have offered to the Trustees adequate security and indemnity, satisfactory to them, against the costs, expenses and liabilities to be incurred therein or thereby, nor unless the Trustees shall have refused or neglected to act on such notification, request and offer of indemnity; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustees, to be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for foreclosure, including the appointment of a receiver or trustee, or for any other remedy hereunder, it being understood and intended that no holder or holders of Bonds and coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien of this Indenture or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had or maintained in the manner herein provided, and for the equal benefit of all holders of the outstanding Bonds and coupons.

Nothing contained in this Section or elsewhere in this Indenture or in the Bonds or coupons shall alter or impair the obligation of the Railroad Company, which is absolute and unconditional, to pay the principal of and interest on the Bonds to the respective holders of the Bonds and coupons, at the time and place and in the amount or at the rate and in the currency prescribed in such Bonds or coupons, nor affect or impair the right of action at law, which is also absolute and unconditional, of such holders to collect such payment.

SECTION 20. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees, or either of them, or the holders of the Bonds is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

SECTION 21. No delay of the Trustees, or either of them, or of any holder of Bonds in exercising any right or power accruing upon any default continuing as aforesaid and no omission to exercise any such right or power shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustees, or either of them, or to the holders of the Bonds, may be exercised from time to time, and as often as may be deemed expedient, by the Trustees, or either of them, or by the holders of the Bonds, respectively.

ARTICLE EIGHT.

Immunity of Incorporators, Stockholders, Officers and Directors.

No recourse shall be had for the principal of, premium, if any, or interest on any Bond, or any part thereof, or for any claim based thereon or otherwise in respect thereof or of the indebtedness repro-

to the Corporate Trustee. Any record so signed and verified shall be conclusive evidence that such meeting was duly convened and held, and any resolution or proceeding stated in such record to have been adopted or taken shall be deemed conclusively to have been duly adopted or taken at the meeting.

ARTICLE ELEVEN.

Concerning the Trustees.

SECTION 1. The Trustees accept the trusts hereby created upon the following terms and conditions, to all of which the Railroad Company and the holders of the Bonds and coupons at any time outstanding, by their acceptance thereof, agree:

(1) The recitals herein and in the Bonds contained shall be taken as the statements of the Railroad Company, and the Trustees assume no responsibility for the correctness of the same. The Trustees make no representation as to the value or condition of the mortgaged property or any part thereof or as to the security afforded thereby and hereby, or as to the lien of this Indenture or the validity thereof or as to the validity of the Bonds issued hereunder, and the Trustees shall incur no responsibility in respect of any such matters, *provided, however,* that nothing herein contained shall relieve the Corporate Trustee of its duty to authenticate Bonds only as authorized by this Indenture.

(2) The Trustees shall be under no duty to file, register or record or cause to be filed, registered or recorded this Indenture, or any supplement thereto, as a mortgage, conveyance or transfer of real or personal property or otherwise, or to refile, re-register or re-record or renew the same. The holders of the Bonds at any time issued and outstanding hereunder release the Trustees of and from any failure so to file, register or record or refile, re-register or re-record or renew this Indenture or any

such supplement, and shall rely solely upon the Railroad Company for said filing or registering or recording or refiling or re-registering or re-recording or renewing. The Trustees shall be under no responsibility or duty with respect to the disposition of the Bonds authenticated and delivered under any of the provisions hereof or the application of the proceeds thereof or of any moneys paid to the Railroad Company under any of the provisions hereof.

Should any taxes or other governmental charges be imposed upon the Trustees, or either of them, in their capacity as Trustees hereunder, which they may be required to pay under any present or future law of the United States of America or of any other authority having jurisdiction, the Trustees shall be reimbursed and indemnified therefor by the Railroad Company, and any liability incurred or amounts paid by the Trustees, or either of them, in respect of any such taxes or other governmental charges, until paid, shall constitute a lien upon the trust estate prior to any claim of the holders of Bonds or coupons.

(3) The Trustees, or either of them, may execute any of the trusts under this Indenture or exercise any of the powers hereby vested in them, or either of them, or perform any duty hereunder either themselves or by or through their attorneys, agents or employees and the Trustees shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys, agents or employees, provided reasonable care has been exercised in the selection thereof and in the continued employment of any such attorney, agent or employee, nor shall the Trustees be otherwise answerable or accountable under any circumstances whatsoever, except for negligence or bad faith. The Trustees shall not be under any obligation or duty to institute, appear in or defend any suit in respect hereof, unless first reasonably indemnified, and the Trustees shall not be under any obligation to take any action in respect of any default or otherwise or toward the execution or enforcement of any of the trusts hereby created or to institute, appear in or defend any suit or other proceeding in connection therewith, unless one or more of the holders of the Bonds shall, as often as required by the Trustees,

furnish them with reasonable security and indemnity against the cost and expenses of said proceeding, but this provision shall not affect any discretionary power herein given to the Trustees to determine whether or not they shall take action in respect of such default or otherwise.

(4) Except as herein otherwise provided, any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustees or either of them or any other person on the Railroad Company, shall be deemed to have been sufficiently given and served for all purposes if deposited, postage prepaid, in a United States Post Office letter-box or mail chute, addressed (until another address is filed by the Railroad Company with the Corporate Trustee and thereafter if addressed to such other address) as follows: The New York, New Haven and Hartford Railroad Company, New Haven Connecticut. Any notice, request or demand by any holder of a Bond or Bonds to or upon the Trustees, or either of them, shall be deemed to have been sufficiently given or made, for all purposes, if given or made at the principal office of the Corporate Trustee.

(5) The Trustees shall not be bound to recognize any person as the holder of a Bond outstanding hereunder unless and until the Bond is submitted to the Corporate Trustee for inspection if requested, and the title thereto established to the satisfaction of the Corporate Trustee.

(6) The Trustees shall be justified in relying upon any notice, resolution, request, waiver, consent, order, certificate, statement, affidavit, indemnity bond, report, appraisal, opinion, telegram, cablegram, radiogram, letter, bond or other paper document or instrument believed by them, or either of them, in the exercise of due care to be genuine and to have been signed, sent or presented by the proper party or parties.

(7) In any instance or instances in which the Trustees are required or permitted, by any provision of this Indenture or in the execution of the trusts hereunder, to exercise judgment, the Trustees may employ an independent engineer, accountant, or

the Corporate Trustee against the costs and expenses of the investigation the Trustees shall make such further investigation as to the Corporate Trustee may seem proper, and *provided further,* that the Trustees may in their discretion make any such independent inquiry or investigation as they may see fit. If the Trustees shall determine, or shall be requested as aforesaid, to make said further investigation, they shall be entitled to examine the books, records and premises of the Railroad Company, themselves or by agent or attorney; and unless the Trustees shall be satisfied, with or without said examination, of the truth and accuracy of the matters stated in said resolution, certificate, statement, appraisal, opinion, report, order or other paper, the Trustees shall not be under any obligation to grant the application. If after said examination or other inquiry the Trustees shall determine to grant the application, they shall not be liable for any action taken with due care and in good faith. The reasonable expense of every examination shall be paid by the Railroad Company, or if paid by the Corporate Trustee, shall be repaid by the Railroad Company upon demand, with interest, and until said repayment shall be secured by a lien on the trust estate and the proceeds thereof prior to the lien of the Bonds.

(10) The Railroad Company covenants and agrees to pay to the Trustees from time to time on demand, reasonable compensation (which shall not be limited by any provision of law with respect to the compensation of fiduciaries or of the trustee of an express trust) for all services rendered by them hereunder and also their reasonable expenses and counsel fees and other disbursements, and those of their attorneys, agents and employees, incurred in the administration and execution of the trusts hereby created and the exercise of their powers and the performance of their duties hereunder.

The Railroad Company also covenants to indemnify the Trustees for, and to hold them harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustees, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending against any claim of liability in the

premises. The Railroad Company further covenants and agrees to pay interest to the Corporate Trustee upon all amounts paid, advanced or disbursed by the Corporate Trustee for which it is entitled to reimbursement or indemnity as herein provided.

The Trustees shall have a lien on the trust estate and the proceeds thereof, prior to the lien of the Bonds, for all amounts agreed to be paid by, and for all obligations of, the Railroad Company under this clause (10).

(11) Whenever in the administration of the trusts created by this Indenture the Trustees, or either of them, shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, said matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be proved and established by a certificate signed by the President or a Vice President and by the Comptroller, Treasurer or an Assistant Treasurer of the Railroad Company and delivered to the Corporate Trustee, but in their discretion the Trustees may require such further or additional evidence as to them may seem reasonable.

(12) The Corporate Trustee shall be under no duty to invest any moneys paid to or deposited with it or to its credit pursuant to any of the provisions of this Indenture, and shall not be liable for interest on any moneys during the period such moneys remain on deposit with it, except as provided in Section 2 of this Article.

(13) Either Trustee, or any company in or with which the Trustees may be interested or affiliated, or any officer or director or trustee or stockholder of the Corporate Trustee or of any such company, may acquire and hold Bonds, and the Corporate Trustee may act as depositary, transfer agent, paying agent, registrar, custodian, escrow agent or fiscal agent for the Railroad Company or for any committee or other body, firm or corporation in respect of any bonds, notes or other securities whether or not issued pursuant to this Indenture.

(14) Any action at any time taken by the Trustees, or either of them, pursuant to or with respect to this Indenture at the

Except only as aforesaid, the Corporate Trustee, as sole trustee, shall exclusively have and exercise all powers, and shall exclusively be charged with the performance of all duties, herein provided to be had and exercised or to be performed by the Trustees. The Individual Trustee may delegate to the Corporate Trustee the exercise of any power, discretionary or otherwise, conferred by any of the provisions of this Indenture, except to the extent the Corporate Trustee may not lawfully have or exercise any such power.

SECTION 7. If at any time or times, in order to conform to any legal requirement, the Corporate Trustee shall so request, the Railroad Company and the Trustees shall unite in the execution and performance of all instruments and agreements necessary or proper to appoint another bank or trust company or one or more other persons approved by the Corporate Trustee, either to act as co-trustee or co-trustees of all or any part of the trust estate, jointly with the Trustees originally named herein or their successors, or to act as separate trustee or trustees of any such property, with such power and authority as may be necessary to the effectual operation of the trusts herein set forth and specified in the instrument of appointment.

SECTION 8. The Corporate Trustee is hereby appointed (and the successive holders of the Bonds issued hereunder, by taking and holding the same, shall conclusively be deemed to have so appointed the Corporate Trustee) the true and lawful attorney-in-fact of the respective holders of the Bonds issued hereunder, with authority to make or file, irrespective of whether the Bonds or any of them are in default as to payment of principal or interest, in the respective names of the holders of the Bonds and coupons or in behalf of all holders of the Bonds and coupons as a class, any proof of debt, amendment to any proof of debt, petition or other document, and to execute any and all other papers and documents and do and perform any and all other acts and things for and in behalf of the respective holders of the Bonds

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and coupons, or in behalf of all holders of the Bonds and coupons as a class, as may be necessary or advisable in the judgment of the Corporate Trustee in order to have the claims of the holders of the Bonds and coupons against the Railroad Company, or any successor, or any other person or corporation, allowed and paid in any equity receivership, insolvency, liquidation, bankruptcy, reorganization or other proceedings which shall involve the trust estate or any part thereof, and to receive payment of or on account of any such claim or claims; and any receiver, assignee or trustee in any such proceeding is hereby authorized by each holder of a Bond or Bonds to make such payments to the Corporate Trustee, and, in the event the Corporate Trustee shall consent to the making of such payments directly to the holders of the Bonds, to pay to the Corporate Trustee any amount due it for compensation and expenses, including counsel fees, incurred by it up to the date of such distribution. The Corporate Trustee shall have full power of substitution and delegation in respect of any such power. The appointment made and authority granted by this Section may be revoked by any holder of Bonds or coupons with respect to Bonds or coupons held by him, at any time after institution of any such proceedings, by delivering notice of such revocation to the Corporate Trustee and filing a copy thereof in such proceeding. Nothing herein contained shall give the Corporate Trustee authority to assent to or reject on behalf of any holder of Bonds and coupons any plan of reorganization proposed or approved in any such proceeding.

ARTICLE TWELVE.

Release and Replacement of Mortgaged Property.

SECTION 1. The Railroad Company from time to time may sell, exchange for other property, or otherwise dispose of, subject to the provisions of this Article, and the Trustees, upon delivery to the Cor-

UNITED STATES OF AMERICA

BEFORE THE
INTERSTATE COMMERCE COMMISSION

In The Matter Of THE NEW YORK, NEW HAVEN, AND HARTFORD RAILROAD COMPANY REORGANIZATION (COMPENSATION-TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO SUCCESSOR INDENTURE TRUSTEE)	Finance Docket No. 21669

BRIEF IN SUPPORT OF PETITION FOR RECONSIDERATION AND REHEARING

It goes without saying that the Interstate Commerce Commission and the reorganization courts are charged with the responsibility of effectuating the Congressional intent of protecting against unreasonable legal expenses in railroad reorganizations. It is equally obvious that the Commission is continuously subjected to intense pressures to revive the nation's transporation system while, superficially at least, involving the public in no additional expense. Nonetheless, neither the lamentable condition of the national transportation system nor the pressures being exerted provide a lawful basis for setting at zero the maximum allowance for interim compensation sought by Petitioner in this matter. No justifiable basis has been offered for the arbitrary and capricious

decision ("the Report") rendered by Division 3 on February 5, 1975.

With a brief recapitulation of the services rendered by the Petitioner, but with no attempt at even superficial analysis of those services in the context of the reorganization proceedings during the period of their rendition, the Division refused to establish even a nominal sum as a maximum allowance for interim compensation. The Report, reduced to its essentials, does nothing more than state in conclusory fashion that the services performed by Petitioner have not been shown, at present, to have been of benefit to the Debtor's estate and, moreover, were duplicative. These conclusions, it is submitted, have no foundation in fact and reflect a major misapprehension of the law and of the Commission's own precedents.

The Division's decision apparently reserves to Petitioner the opportunity to demonstrate, at the conclusion of the reorganization proceedings, that the services rendered during the period under consideration were, in fact, of benefit to the Debtor's estate and thus, inferentially, merit compensation. Yet, the language of the Division throughout the Report suggests strongly, and perhaps states unequivocally, that the services could not have been of benefit to the Estate, in large part because they presumably duplicated the efforts of the reorganization Trustee and his counsel. The Report begs the question.

First, it is to be noted that the Division nowhere claims that the services were not "incurred in connection with the proceedings and plan", as set forth in Section 77(c)(12) of the Bankruptcy Act (11 U.S.C. 205(c)(12)). Indeed, the Division's own narrative of those services demonstrates that they were performed in connection with the proceedings and plan when it recognized that the protection and prosecution of the New Haven's claim against the Penn Central are of vital importance if the plan for the New Haven is to be successfully implemented. Petitioner's services, therefore, fall within the literal language of the statute.

Of greater moment, however, is the implicit but fallacious definition of "benefit" utilized by the Division. Without conceding that benefit to the estate is necessarily the touchstone, it certainly cannot be said that "benefit" is to be measured only in terms of demonstrable financial gain to the estate. Only infrequently will services rendered in connection with the proceedings and plan be susceptible of quantitative financial measurement. Nor need they be so. The Commission has itself recognized this fact, when, in St. Louis S. F. Ry. Co. Reorganization, 233 I.C.C. 780 (1939), it fixed a maximum limit of interim compensation for special trial counsel although his services had only resulted in an adverse judgment and it had to be assumed that ultimately there would be no recovery to the estate. It was said there

that the effectiveness of the endeavors is only one factor to be considered. It was recognized there, as it should be here, that valuable services may be performed, and should be compensated, although the assets of the estate have not been increased to any appreciable degree.

The court in Manhattan Co. v. New York, N. H. & H. R. Co., 171 F.2d 482 (2 Cir. 1948), recognized that a simplistic definition of benefit or of valuable services simply is neither acceptable nor helpful in a reorganization context. A similar understanding is implicit in In re Chicago, N., St. P. & R. Co., 138 F.2d 433 (7 Cir. 1943), cert. denied 321 U.S. 770 (1944), cited by the Division. Interestingly, the right to interim compensation, without any specific finding of value to the estate, is recognized in Chicago & E. I. Ry. Co. Reorganization, 212 I.C.C. 491 (1936). Maximum limits of interim compensation were fixed in St. Louis S. W. Co. Reorganization 236 I.C.C. 25 (1939), although no plan of reorganization had as yet been approved. Thus, it can be seen that the Division either misconstrued the appropriate definition of "benefit" or ignored earlier decisions. Clearly, it applied an improper standard in the Report.

Before leaving this aspect of the decision, reference should be made to Chicago G. W. R. Reorganization, 233 I.C.C. 737 (1939), where it was said, at page 740, "The problems involved in this reorganization were relatively simple. There was only one principal mortgage and no contro-

versy as to priority of liens." And yet, in fixing the maximum limits of final allowances, it was said that the First Mortgage Trustee "has rendered and will be required to render in the future, services necessitated by the reorganization proceedings, in protecting the rights of the bonds issued under that mortgage, ..." (Emphasis added) The Division, in its decision presently under consideration, evidently ignored that aspect of Petitioner's services.

Another decision upon which the Division placed great reliance is In re New York, N. H. & H. R. Co., 46 F.Supp. 214 (D. Conn. 1942). The court in that case found the Congressional intent to be "that responsible creditor participation in the processes of reorganization should be encouraged by the allowance of reasonable compensation to the parties and their representatives for services reasonably essential to a just reorganization." (Emphasis added). 46 F.Supp. at 219. The court did not say that those services had to be absolutely essential nor did it say that creditor interests had to prove a tangible benefit emanated from their efforts before they could be compensated. Rather, the court recognized that, within reasonable limits, the participation of creditor interests is necessary if there is to be a just reorganization. Similarly, the current New Haven Reorganization Court recognized the correctness of that statement when it appointed a successor indenture trustee after a wide-ranging search.

What must be understood from a reading of the last two decisions is that a major benefit to any estate in reorganization is the guarantee of due process and equal protection of the laws. Why else would the Commission have found it necessary to provide for protection of the bonds issued under the mortgage in Chicago G. W. R. Reorganization, supra? And when Judge Hincks refers to a "just reorganization", can there be any doubt but that he is adverting to a constitutional standard? The Division, unfortunately, emphasized the negative throughout its decision and overlooked entirely the fundamental rights of the bondholders. It isn't benefit to the estate which is obscured in this case; it is, rather, the difference between the protection of basic rights and the avoidance of waste. The former is not to be sacrificed to a ritualistic subservience to the latter.

The Division did not simply misconstrue the applicable standard with respect to benefit; it failed and neglected to examine with any care the services rendered. Rather, it observed that counsel for the Successor Trustee and counsel for the reorganization Trustee were in the same courts or at the same hearings at the same time and concluded that the services of the Petitioner were neither valuable nor beneficial. It was obviously impressed with the great number of hours recorded by counsel for the reorganization Trustee and with the level of compensation it had approved for those counsel. See 348 I.C.C. at 38. And while time devoted to the reorgan-

ization proceedings is considered important by the Division when weighing the efforts of counsel for the reorganization Trustee, it is totally ignored in the Division's evaluation of Petitioner's services. Clearly, this constitutes an arbitrary and capricious exercise of its power by the Division and an abuse of its discretion.

Overlooked as well by the Division is the nature of the estate in the present proceedings. Conditioned to dealing with estates of operating railroads, the Division ignored the fact that the New Haven is not an operating entity. It has been relieved of its operating properties and now simply awaits, with justifiable anxiety, its constitutionally guaranteed payment for those properties in order to complete its reorganization. With the exception of various administration claimants, the sole beneficiaries of the estate are the holders of the First Mortgage Bonds, whose interests are represented in the proceedings by the Petitioner and its client, the Successor Trustee. As a result, there is no real, substantive difference between the estate and the bondholders; although there may be, and have been, differences between the Reorganization Trustee and the Successor Trustee as to where the best interests of the estate, and thus the bondholders, lie. In this respect and in this proceeding, the function of the Successor Trustee is vital. The subject matter of compensable services is neither restricted to the formulation of a plan nor so rigidly circumscribed as the

Division would have it. Denver & R. G. W. R. Co. v. McCarthy, 111 F.2d 820 (10 Cir. 1940). The estate must be viewed in its entirety and arbitrary distinctions avoided.

While we have adverted to the question of duplication earlier, it requires more specific examination. It is never clear what the Division means by duplication, but apparently it categorized all joint activity as duplicative activity; although not even that is clear since it also speaks of Petitioner's efforts as being "supplemental to" the efforts of the New Haven Trustee. 348 I.C.C at 37. The Division did not distinguish between those services which duplicated, in its view, the efforts of the New Haven Trustee and those which supplemented them. Nor does it explain by what authority it finds that supplemental services, as distinguished from purely duplicative services, are not compensable.

One specific example of the difference between a joint activity and a duplicative activity may be found in the services performed in the Court of Appeals for the Second Circuit in an attempt to preserve the equitable lien and constructive trust imposed by the New Haven Reorganization Court. Of the various New Haven interests involved in that litigation, it was only this Petitioner's client, for example, who questioned the jurisdiction of the Court of Appeals to interpret a mandate of the Supreme Court and, thus, preserved that issue for the subsequent petition for certiorari. Although the efforts of the New Haven interests did not meet

with success, that, as has been explained above, is not the sole or even most important criterion. To the extent that they contributed to a just reorganization, Petitioner's services constituted a valuable service for which compensation is warranted. After all, even the Commission admits to failure upon occasion. See 348 I.C.C. at 36. If, in July, 1969, there was every reason to believe that the New Haven reorganization was in its concluding stages, there was every reason to believe that the issues raised by the Successor Trustee in the Second Circuit were necessary to the continuing protection and enhancement of the New Haven estate.

What is also ignored in the Report is that while independent judgments may lead to similar conclusions and actions, the existence and exercise of independent judgment are of value and not a duplication of effort. Thus, in the present proceedings, the fact that counsel for the reorganization Trustee and counsel for the Successor Trustee may have conferred on a specific matter, as, for instance, sale of certain properties to the Commonwealth of Massachusetts, and agreed ultimately to the terms and conditions of such sale, does not mean that the time and thought dedicated to the problem were unnecessary, undesirable, or valueless. Nor, for that matter, can it be assumed that the result would not have differed absent the participation of creditor interests.

Moreover, parties in interest cannot participate effectively and aggressively where such action is undeniably

necessary if they haven't remained apprised of the variety of circumstances and situations affecting, directly or indirectly, the debtor's estate. This was implicitly recognized by the Commission in Chicago, M., St. P. & P. R. Co. Reorganization, 242 I.C.C. 113 (1940), a case cited by the Division in its opinion. 348 I.C.C. at 35. There was no outright denial of compensation in that case even though there had been clear duplication of effort by many parties. Realistically, the Commission recognized that the compensation decision is comprised of many factors.

Perhaps the most important factor in the matter presently under consideration is one the Division never recognized or addressed -- the "watchdog" function. It must not be forgotten that the Successor Trustee was appointed by the Reorganization Court only after a diligent and lengthy search for a person willing to act in the circumstances. A transcript of the remarks of the Court with respect to that search and its importance has been sent to the Commission by special counsel for the New Haven Trustee and is on file in these proceedings. The Reorganization Court understood that, while the reorganization Trustee is entrusted with the responsibility for protecting the interests of all creditor and claimant interests, that Trustee's responsibility for the public interest as well will frequently result in conflicting demands. The creditor interests -- who are, after all, the estate for all practical purposes and whose

rights have been subordinated to the public interest for many years -- have a right to independent committed representation which cannot be denied them because, as a practical matter, the Division denies them the means to retain such counsel. In effect, the Division has said the assets of the holders of First Mortgage Bonds may not be expended on their own behalf to protect their own assets.

The Reorganization Court recognized the realities of the situation created by the lengthy proceedings and the subsequent reorganization proceedings of the Penn Central. It refused to permit the circumstances theretofore created in the name of the public interest to erode even further the rights of the bondholders and the basic structure of our judicial proceedings. It provided for adequate independent representation -- an accepted principle of our judicial system -- in the only practical way available to it; it appointed a Successor Trustee and counsel for him with the tacit understanding that the Successor Trustee and his counsel could look to the estate for fair and reasonable compensation. The principle underlying that action was recognized in In re New York, N. H. & H. R. Co., 46 F.Supp. 214, 219 (D.Conn., 1942), where both the need for responsible creditor participation and the concomitant requirement of compensation from the estate were articulated by the court.

Manifold practical and policy considerations exist supporting the necessity for and the desirability of ensuring

there will be a monitoring of the reorganization proceedings by parties without split loyalties. Furthermore, the monitoring function does not depend for its importance upon any failure in performance of the reorganization Trustee. The latter may discharge his duties commendably, but the monitor helps to ensure that fact. It is irrelevant to the monitoring function that the Commission oversees, in conjunction with the court, the reorganization proceedings. The Commission's responsibilities differ in large part from that of the creditors' representatives.

Since, however, the Commission is charged with setting maximum limits of compensation, it should reasonably be expected to identify non-traditional, as well as traditional, situations and apply its experience in appropriately differing ways. That is, faced, among other things, with an estate which is not operating a railroad, a Successor Trustee different in substantial degree from customary indenture trustees and of necessity appointed by the Reorganization Court, and an estate whose assets belong in major part to the bondholders represented by the court-appointed Successor Trustee, the Commission should be able to free itself of constricting shibboleths and evaluate on an individual basis the value of services performed in such circumstances. Unfortunately, that has not been done by the Division.

In fact, the Division has acted in an arbitrary and capricious fashion. It gave no consideration to the factors described above or to those noted in Missouri Pac. R. Co. Reorganization, 217 I.C.C. 577 (1936) or New York, S. & W. R. Co. Reorganization, 230 I.C.C. 437 (1938). The Commission has said it cannot tell in advance what types of services would be compensable from the debtor's estate, Erie R. Co. Reorganization, 242 I.C.C. 517 (1940); but since the Division, when required to evaluate services already performed, ignores material factors other than "benefit" and "duplication", as those terms were improperly defined by it, and denies compensation, counsel are left with no reliable yardstick and must, in each case, proceed at their own risk. This represents an abuse of discretion by the Division.

The Division, by denying compensation, has deprived Petitioner, its client, and the bondholders of due process and equal protection of the laws. There is no substantial evidence to justify its conclusion. Beyond that, it refused to accept the Reorganization Court's mandate that there should be relatively equal treatment for counsel subject to Section 77(c)(12) and counsel and special counsel for the reorganization Trustee under Section 77(c)(2).

In conclusion, although Petitioner apparently is not foreclosed from having its petition for compensation considered by the Commission at some later stage in the proceedings, it is submitted that both equity and the grave errors contained

in the Division's decision require serious reevaluation of the Division's position and the setting of maximum limits of interim compensation at this time. The amount of such interim compensation should approximate the amounts set forth by Petitioner, as amended and explained. Petitioner has submitted additional data for the Commission's consideration. It is Petitioner's opinion, respectfully submitted, that it is entitled to fair and reasonable compensation as described in the materials presented.

On the basis of the facts and the law, therefore, the decision of Division 3, dated February 5, 1975 and served on February 26, 1975, should be set aside and maximum limits of interim compensation and variable expenses set as prayed by Petitioner.

TYLER, COOPER, GRANT, BOWERMAN & KEEFE

By Irving S. Schloss

Irving S. Schloss
205 Church Street
P.O. Box 1936
New Haven, Connecticut 06509

Dated: April 30, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Petition for Reconsideration and Rehearing with Brief and Exhibits, by mailing a copy of said documents to all parties of record in this proceeding, first-class mail, postage prepaid, and by personally delivering the requisite number of copies thereof to the Interstate Commerce Commission.

Dated at New Haven, Connecticut, this 30th day of April, 1975.

Attorney

SERVICE DATE

OCT 15 1975

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D.C., on the 9th day of October, 1975.

Finance Docket No. 21669

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY REORGANIZATION
(COMPENSATION-TYLER, COOPER, GRANT, BOWERMAN & KEEFE, COUNSEL TO SUCCESSOR INDENTURE TRUSTEES)

Upon consideration of the record in the above-entitled proceeding including the report and order of the Commission, Division 3, in New York, N.H. & H.R. Co. Reorganization, 348 I.C.C. 31, dated February 5, 1975, which set maximum limits of allowances for interim compensation for services rendered and reimbursement for expenses incurred by petitioner Tyler, Cooper, Grant, Bowerman & Keefe, counsel for the successor indenture trustees, for the period July 1, 1971, through December 31, 1972, at zero, and the petition for reconsideration and rehearing filed April 30, 1975, by petitioner; and

It appearing, That the petition sets forth no material facts or arguments in addition to those previously considered in this proceeding; that the report and order of February 5, 1975, is adequately supported by the record, that there has been presented no error of fact or law with respect to the matters raised by petitioner; and that no showing has been made warranting reconsideration;

It further appearing, That petitioner should look to its clients for compensation, In Re Chicago, M. St. P. & P.R. Co., 138 F. 2d 433, 436 (7th Cir. 1943), as the services for which compensation is requested in this proceeding were not performed in connection with the development of a plan of reorganization; relate to matters, primarily the responsibility of the New Haven Trustee, which were acted upon with care and diligence by the New Haven Trustee and his various counsel; and at this time appear to be of no value to the New Haven Estate;

It is ordered, That the petition for reconsideration and rehearing be, and it is hereby, denied.

By the Commission, Division 3, acting as an Appellate Division.

ROBERT L. OSWALD
Secretary

(SEAL)

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

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NOV 29 1974 S. DISTRICT COURT NEW HAVEN, CONN.
FILED INTERSTATE COMMERCE COMMISSION
F.D. 21639 Petition for Order No. 754
RECEIVED
1974
Office of Proceedings Sec. of Finance

In The

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

In the Matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Debtor

No. 30226

NOV 2 1974
ADMINISTRATIVE SERVICES MAIL BRANCH

PETITION OF LAWRENCE W. IANNOTTI, SUCCESSOR TRUSTEE UNDER DEBTOR'S FIRST AND REFUNDING MORTGAGE DATED AS OF JULY 1, 1947, FOR ALLOWANCE FOR EXPENSES INCURRED FOR THE PERIOD JANUARY 2, 1973 THROUGH JUNE 28, 1974 INCLUSIVE IN CONNECTION WITH THESE PROCEEDINGS

DEC 6 3 11 PM '74
TRANSCRIPTION RECEIVED

NOW COMES Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage dated as of July 1, 1947, and respectfully petitions this Court, pursuant to the provisions of Section 77(c)(12) of the Bankruptcy Act, for an allowance for the actual and reasonable expenses incurred by him for the period January 2, 1973 through June 28, 1974 in connection with these proceedings, and in support thereof, respectfully represents:

1. That on July 29, 1971, this Court by Order No. 650 appointed your petitioner as Successor Trustee.

2. That on September 3, 1971, this Court by Order No. 655 appointed Messrs. Tyler, Cooper, Grant, Bowerman & Keefe as your petitioner's legal counsel.

3. That from July 1, 1971 through June 28, 1974, Messrs. Tyler, Cooper, Grant, Bowerman & Keefe rendered professional services to your petitioner with respect to such matters as were directed by your petitioner, and that they have continued to do so since June 28, 1974.

4. As Successor Trustee, and as a matter of law, your petitioner owes a fiduciary duty to each of the holders of the Debtor's [redacted]irst Mortgage Bonds and is obligated to represent those holders with the same degree of care and skill which a prudent man would use under the circumstances in the conduct of his own affairs.

5. That during the period January 2, 1973 through June 28, 1974, Messrs. Tyler, Cooper, Grant, Bowerman & Keefe rendered professional services to your petitioner in connection with these pro[redacted]eedings, as more specifically described in Appendices A and B attached hereto and made a part hereof.

6. That the services rendered by Messrs. Tyler, Cooper, Grant, Bowerman & Keefe during the period covered by this petition are set [redacted]orth in detail in Appendices A and B hereto and may be classified as falling into five general categories:

A. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company.

B. Matters relating to the reorganization of The Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

E. Advice on various administrative matters involving your petitioner in his capacity as Successor Trustee.

7. By Order No. 691, this Court transmitted to the Interstate Commerce Commission the petition of Messrs. Tyler, Cooper, Grant, Bowerman & Keefe for compensation for legal services rendered during the period July 1, 1971 through December 31, 1972, which petition was received and docketed by the Interstate Commerce Commission on April 2, 1973 and is still pending before said Commission.

8. That reasonable compensation for the services rendered by Messrs. Tyler, Cooper, Grant, Bowerman & Keefe as counsel for your petitioner in this proceeding can be determined at the conclusion of these proceedings, but that they promptly should receive interim compensation pending completion of these proceedings and the filing by them of a petition for allowance of final compensation.

9. That this Court held in a decision dated July 28, 1969, reported at 304 Federal Supplement 1121, that counsel for Indenture Trustees might file for interim compensation, that such petitions should be entertained, and that such compensation would be paid in cash.

10. That your petitioner should be reimbursed for the fees for legal services rendered by Messrs. Tyler, Cooper, Grant, Bowerman & Keefe, and that the nature of the professional services performed, the benefits to the Debtor from such services and the time spent are such as to justify interim compensation for the period January 2, 1973 to June 28, 1974 in an amount not less than $33,750.00, plus reimbursement for disbursements of $2,630.47 as itemized in Appendix B hereto.

WHEREFORE, your petitioner prays that this Court:

1. Enter an order for transmittal by the Clerk of this Court to the Interstate Commerce Commission of twenty copies of the within

petition and of such order, to the end that said Interstate Commerce Commission, upon receipt of such copies, may approve the maximum limits of the allowance to be made for the actual and reasonable expenses requested in this Petition and may file with this Court its report thereon;

2. Reserve jurisdiction to consider and pass upon the allowance of expenses and interim compensation requested in this Petition for the period January 2, 1973 through June 28, 1974, upon receipt by this Court of the aforesaid Interstate Commerce Commission Report.

Dated at New Haven, Connecticut, this 7th day of November, 1974.

Lawrence W. Iannotti,
Successor Trustee

STATE OF CONNECTICUT)
) ss.: New Haven; November 7, 1974
COUNTY OF NEW HAVEN)

Lawrence W. Iannotti, Successor Trustee under The New York, New Haven and Hartford Railroad Company's First and Refunding Mortgage, being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and that the same is true to the best of his knowledge and belief.

Lawrence W. Iannotti

Subscribed and sworn to before me this 7th day of November, 1974.

Notary Public

My Commission Expires: March 31, 1977

(Notarial Seal)

Order No. 754

In The

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In Proceedings For The Reorganization
Of A Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY Debtor	No. 30226

ORDER RESPECTING THE ALLOWANCE FOR EXPENSES INCURRED BY INDENTURE TRUSTEE

The petition of Lawrence W. Iannotti, Successor Trustee under the Debtor's First and Refunding Mortgage dated as of July 1, 1947, for the allowance for expenses incurred for the period January 2, 1973 through June 28, 1974, having been duly filed with this Court, it is ORDERED:

1. That the Clerk of this Court forthwith transmit to the Interstate Commerce Commission, Washington, D. C. 20423, twenty certified copies of the petition of said Lawrence W. Iannotti for the allowance for expenses for the period January 2, 1973 through June 28, 1974 and of this order, to the end that said Interstate Commerce Commission, upon receipt of said copies, may approve the maximum limits of the allowance to be made upon said petition for expenses of said Lawrence W. Iannotti for the period therein specified, and may file with this Court its report thereon; and

2. That jurisdiction be and it hereby is reserved in this Court to consider and pass upon the allowance for expenses to said Lawrence W. Iannotti for the period specified in the said petition upon receipt by this Court of the report of said Interstate Commerce Commission approving said maximum limits of allowance for expenses.

ENTER:

Robert P. Anderson
United States Circuit Judge
sitting by designation

Dated: [illegible] 21, 1974

CERTIFICATE OF SERVICE

This is to certify that copies of the within petition and order were deposited in the U. S. Mails, first-class postage prepaid, to all parties who are customarily notified of hearings in these proceedings, on November [illegible], 1974.

Attorney

Appendix A

Petition for Order No. 754

In The

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	No. 30226

AFFIDAVIT OF DONALD F. KEEFE, A MEMBER OF THE FIRM OF TYLER, COOPER, GRANT, BOWERMAN & KEEFE, IN SUPPORT OF THE PETITION OF LAWRENCE W. IANNOTTI, AS SUCCESSOR TRUSTEE, FOR ALLOWANCE FOR EXPENSES INCURRED FROM JANUARY 2, 1973 THROUGH JUNE 28, 1974 INCLUSIVE IN CONNECTION WITH THESE PROCEEDINGS

'TATE OF CONNECTICUT)
) ss.: New Haven, November 27, 1974
OUNTY OF NEW HAVEN)

DONALD F. KEEFE, being duly sworn, deposes and says:

1. I am a member of the firm of Tyler, Cooper, Grant, Bowerman Keefe, counsellors at law, and am submitting this affidavit in pport of the petition (the "Petition") of Lawrence W. Iannotti, Successor Trustee (the "Successor Trustee"), for allowance for penses incurred from January 2, 1973 through June 28, 1974.

2. My firm has rendered professional services to the Successor Trustee from July 1, 1971 to date with respect to such tters as were directed by the Successor Trustee.

3. This Court by Order No. 655 appointed my firm as legal nsel to the Successor Trustee.

4. During the period January 2, 1973 through June 28, 1974, firm spent a total of 584 hours in connection with the matters einafter described through two of its lawyers, of which time 257 rs were spent by Lawrence W. Iannotti, a partner of my firm, as e fully set forth in Appendix B to the Petition.

5. The services rendered by my firm during the period covered the Petition are set forth in detail in Appendix B to the ition, and may be classified as falling into five general gories:

A. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company.

B. Matters regarding the reorganization of The Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

E. Advice on various administrative matters involving the Successor Trustee.

6. The tasks and responsibilities which were reposed in my as legal counsel, the nature of professional services perd, the benefits to the Debtor from such services and the time are such as to justify interim compensation for my firm for eriod January 2, 1973 through June 28, 1974 in an amount not

ess than $33,750, plus reimbursement for disbursements of $2,630.47, s itemized in Appendix B to the Petition. Details regarding the ature of the services rendered by my firm, the benefit to the ebtor's estate, the responsibilities involved and the time expended re set forth in greater detail in Exhibit 1 to this Affidavit.

7. Neither I nor my firm nor any member or associate thereof as entered into any agreement, written or oral, express or implied, ith the Petitioner, the Debtor or any other person in interest or ny attorney or other agent of any such party, for the purpose of ixing the amount of compensation to be allowed or paid to any party r other person from the assets of the Debtor's estate for the services my firm has rendered or expects to render in these proceedings.

WHEREFORE, I respectfully request that the relief requested in he Petition be in all respects granted.

Donald F. Keefe

Subscribed and sworn to before me this day of November, 974.

Notary Public

BEST COPY AVAILABLE

Petition for Order No.754

In The
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

n the Matter of HE NEW YORK, NEW HAVEN AND ARTFORD RAILROAD COMPANY, Debtor	No. 30226

EXHIBIT 1 TO AFFIDAVIT OF DONALD F. KEEFE IN SUPPORT OF PETITION FOR ORDER NO. 754 OF LAWRENCE W. IANNOTTI, AS SUCCESSOR TRUSTEE UNDER THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD'S FIRST AND REFUNDING MORTGAGE DATED AS OF JULY 1, 1947, FOR ALLOWANCE OF EXPENSES INCURRED FROM JANUARY 2, 1973 THROUGH JANUARY 28, 1974 INCLUSIVE IN CONNECTION WITH THESE PROCEEDINGS

ntroductory.

This Appendix sets forth in detail the nature of the work erformed by Tyler, Cooper, Grant, Bowerman & Keefe, the resulting ccomplishments and benefits to the Debtor's estate, and the esponsibilities placed upon counsel. To summarize, in the present tate of the New Haven and Penn Central reorganizations, representation of the interests of the Debtor's estate and the First Mortgage ondholders consists of efforts to protect the New Haven's claim gainst the Penn Central, maximize the likelihood of payment, horten the waiting period until payment and avoid actions inconistent with the New Haven's claim to be a secured creditor of the enn Central. During the period covered by the Petition, the bulk f the services performed centered around the proceedings in the Penn Central reorganization before the Interstate Commerce Commis-

sion (the "Commission") in the summer of 1973 and efforts to dismiss the Penn Central reorganization. The work we have done has been directed primarily towards securing a dismissal of the Penn Central reorganization and the creation of an equity receivership to liquidate the Penn Central's assets. This position is the only one which will protect the constitutional rights of the Debtor's estate as a Penn Central creditor and provide a means by which the New Haven's claim against the Penn Central will be paid.

We have attempted to perform these services in the most economical and least duplicative manner possible. As was true at the time our prior petition for compensation was filed, we have not attempted formally to become a party in the Penn Central proceedings in the Eastern District of Pennsylvania or taken an active role in those proceedings. In light of the major part being taken by the New Haven Trustee in those proceedings, our general identity of interests there and an agreement on most issues there, our active participation cannot be justified at this time. Similarly, since we concur in the judgment of the New Haven Trustee's counsel that the Regional Rail Reorganization Act of 1973 (the "Act") is unconstitutional, we have not taken any part in the extensive litigation which has been brought to have the Act declared unconstitutional. We have disagreed on the litigation's strategy but not on its goals. To the extent possible, we have avoided having more than one lawyer represent the New Haven estate's creditor interests at hearings in Washington, D.C. or Philadelphia. During the aforementioned Commission hearings, the three major New Haven creditor interests were able to coordinate their schedules so that only one lawyer attended on a given day. These efforts are, we believe, consonant with our obligations to represent our client, the Successor Trustee, and to preserve the Debtor's estate by,

among other things, minimizing the cost of legal representation consistent with the requirement of adequate and responsible advocacy. On the other hand, it should be borne in mind that the Successor Trustee and we, as his counsel, have a fiduciary obligation to protect the interests of the First Mortgage Bondholders and that, with a number of different parties, some duplication of effort must and will always occur.

Time Expended.

During the period from January 2, 1973 through June 28, 1974, Tyler, Cooper, Grant, Bowerman & Keefe rendered professional services by two of its lawyers who devoted to the matters set forth in detail below a total of 584 hours as follows: Partners, namely Lawrence W. Iannotti, 257 hours; and Associates, 327 hours. The rates at which their time is billed are approximately $65 an hour for partners and $45 an hour for associates.

Services.

The work performed by Tyler, Cooper, Grant, Bowerman & Keefe at the direction of the Successor Trustee during the period from January 2, 1973 through June 28, 1974 may be classified as falling into five general categories. Such work, together with the benefits and responsibilities in connection therewith, is described in detail as follows:

A. Matters relating to the reorganization of The New York, New Haven and Hartford Railroad Company.

a. Nature of service. Most of the work performed in the New Haven reorganization during the period covered by the Petition concerned the New Haven's claim as a secured creditor in the Penn Central reorganization. Richard Joyce Smith, the New Haven Trustee, filed a plan of reorganization for the Penn Central dated June 27,

1973 with the Commission. That plan had major implications for the New Haven estate since it posited that the Penn Central could in fact be reorganized and that the New Haven estate would receive Penn Central income notes. After considerable study and discussion, we and the other New Haven creditor interests concluded that the plan was not feasible because it required the cooperation of other parties which would not be forthcoming and which could not be compelled by the New Haven Trustee. We concluded that the Penn Central was, in any event, not reorganizable on an income basis. Since at least the summer of 1973, we have openly taken the position that the Penn Central reorganization should be dismissed, that the Penn Central should be liquidated and that any other alternative would be violative of the Fifth Amendment to the United States Constitution. Subsequent events have indicated that this course of action is the only one which will protect the Debtor's interest as a Penn Central claimant.

Following extensive hearings before the Commission on the reorganization of the Penn Central, we prepared a petition for the New Haven Reorganization Court instructing the New Haven Trustee to abandon his plan and to move to dismiss the Penn Central proceedings under Section 77(g) of the Bankruptcy Act. The New Haven Trustee independently prepared such a motion which he filed in the Penn Central Reorganization Court. A hearing was held on the petition in the New Haven Reorganization Court. Since that time, our efforts have been directed at insuring that the motion is relentlessly pursued.

b. Benefit. The effect of our efforts has been to help forestall the New Haven Trustee's plan, which the Commission itself did not find feasible, and to further the process by which the Penn Central is moving toward dismissal of the reorganization and liqui-

dation. Such efforts have been directed at protecting the value of the New Haven estate's claim against the Penn Central and its constitutional rights as a Penn Central creditor.

c. Responsibilities. We have been responsible for representing the Successor Trustee in regard to the New Haven Trustee's plan, in proceedings before the New Haven Reorganization Court, and in subsequent discussions with other New Haven interests.

d. Time. 55 hours and 30 minutes.

B. Matters regarding the reorganization of the Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

a. Nature of Service. Much of the work performed during the period covered by the Petition concerned the Penn Central Trustees' plan of reorganization and proceedings following the filing of the Commission's report in regard to the reorganization of the Penn Central.

We carefully reviewed the Penn Central Trustees' reports on reorganization planning and their proposed plan of reorganization. That plan required extensive analysis since it appeared on its face to approximate our position. Our examination indicated that the plan contained numerous possibilities for delay and would not adequately protect the interests of the New Haven estate. For that reason, we opposed the plan in hearings before the Commission and the Penn Central Reorganization Court. Consequently, we urged a cessation of rail services since the Commission had failed to certify any of the proposed plans of reorganization to the Court. This position was also taken in papers filed with the Court.

We also engaged in a continuous review of major decisions in the Penn Central Reorganization Court and the United States Court of Appeals for the Third Circuit which had significant implications

for the New Haven estate, such as the decision or proceedings regarding the proposed Pennco settlement, the Park Avenue properties, and the Columbus Option opinion of the Third Circuit.

Finally, we appeared at the hearing in the Penn Central Reorganization Court on the New Haven Trustee's motion to dismiss the Penn Central proceedings under Section 77(g) of the Bankruptcy Act of 1973.

b. Benefit. Although we have not formally appeared as a party in the Penn Central reorganization, we have advised counsel for the New Haven Trustee of our position, appeared at hearings and filed memoranda and statements of position. We have thereby aided in protecting the New Haven estate's claim against the Penn Central and in moving the Penn Central proceedings toward dismissal and liquidation. Our position has been consistent throughout this period, and we have repeatedly insisted that our spokesman, the New Haven Trustee, be persistent in pursuit of his motion to dismiss and build the record which we believe is necessary for such a motion to succeed on the merits and protect creditor interests.

c. Responsibilities. We were responsible for all the above.

d. Time. 119 hours and 45 minutes.

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

a. Nature of Service. As stated above, the plans of reorganization filed by the Penn Central Trustees and the New Haven Trustee had to be analyzed for purposes of the hearings held before the Commission during July and August of 1973. The plan of reorganization subsequently filed by the Penn Central Company also required analysis. We appeared before the Commission at a pre-hearing conference to present our position. We appeared and cross-examined

witnesses over a five day period during those months. That appearance and cross-examination required extensive review of the evidence submitted by the Penn Central Trustees and the New Haven Trustee in regard to the valuation of assets, cash position, physical condition of the rail assets, the viability of various configurations of rail lines and similar matters. Subsequent to the conclusion of the hearings, we filed a legal memorandum and proposed findings of fact on behalf of all the New Haven creditor interests. We also extensively reviewed the Commission's report, especially as it affected the New Haven estate and the likelihood that the Penn Central reorganization would be dismissed.

b. Benefit. Our work enabled the interests of the Debtor's Estate and the First Mortgage Bondholders to be protected since we opposed all of the plans of reorganization, as did the Commission, and we pressed for the cessation of rail services and liquidation. In this respect, we differed with the New Haven Trustee and independent representation was essential. We placed our position upon the record at every reasonably available opportunity and attempted, with other parties, to demonstrate that the Penn Central could not be reorganized on an income basis or upon the basis proposed by the New Haven Trustee. The upshot of our and other parties' efforts was that the Commission did not certify any of the plans and a motion to dismiss was filed shortly thereafter, partly as a result of our insistence.

c. Responsibilities. Responsibility for the review of the plans of reorganization, representation on certain days of the New Haven creditor interests, preparation of a legal memorandum and proposed findings of fact rested upon us. Throughout, we received the help and cooperation from counsel for the other New Haven creditor interests.

d. Time. 261 hours.

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

Though the New Haven Trustee has taken the lead in representing the New Haven estate in its efforts to have the act declared unconstitutional, counsel was required to participate in earings in two courts to protect the interests of the First Mortgage Bondholders.

This entailed first a careful review of the Act's provisions and its implications for the future of the Penn Central and New Haven reorganizations. This required careful consideration of the impact of the Act upon interim operating losses, the likelihood of ventual payment for the Penn Central rail assets and the value, if any, of the consideration to be given by the Consolidated Rail Corporation for those assets. Conferences were then held with counsel for the other New Haven creditor interests to determine the trategy to be adopted in regard to the Act, and meetings were held in Washington, D. C. of the New Haven creditor interests, the New Haven Trustee and major creditor and governmental interests. Despite the litigation undertaken by the New Haven Trustee, we made fforts to insure that he would continue to pursue his motion to dismiss the Penn Central proceedings.

We appeared at and participated in the hearing in the New Haven Reorganization Court under Section 207(b) of the Act. We also prepared for and appeared at a similar hearing before the Penn Central Reorganization Court. In light of the conclusions reached y those Courts that the New Haven is not covered by the Act and the Penn Central cannot be reorganized on an income basis, it appeared most economical to have the New Haven Trustee undertake

further litigation without involvement by other New Haven interests. Nonetheless, we have had to review briefs and other pleadings filed in that litigation in order to remain informed.

b. Benefit. We have been helpful in securing a ruling from the New Haven Reorganization Court that the New Haven is not subject to the Act, a ruling which will permit maximum flexibility in the further course of the New Haven proceedings. We have taken the position in pleadings before the Penn Central Reorganization Court and with counsel for the New Haven Trustee to the effect that the Act is unconstitutional and provides additional grounds for dismissing the Penn Central proceedings. The efforts by counsel for all the New Haven interests have brought dismissal and liquidation nearer, thus increasing the likelihood that the Debtor's estate will receive satisfaction for its claim against the Penn Central.

c. Responsibilities. We have prepared pleadings, developed a strategy and position for the Successor Trustee and represented that position, with other counsel, before the New Haven and Penn Central Reorganization Courts.

d. Time. 130 hours.

E. Advice regarding various administrative matters involving the Successor Trustee.

a. Nature of Service. This category of services involves advice to the Successor Trustee in regard to his fiduciary obligations to the First Mortgage Bondholders and any other legal matters which may arise in connection with his functions as Successor Trustee. Counsel has advised the Successor Trustee as to possible liabilities under Rule 10b-5 under the Securities and Exchange Act of 1934 and problems of inside information. Annual letters to the First Mortgage Bondholders have been prepared by

counsel after careful review of the New Haven Trustee's annual report. Counsel has also advised the Successor Trustee in regard to responding to questions received from First Mortgage Bondholders.

b. Benefit. The services rendered by counsel have enabled the Successor Trustee to operate without legal entanglements, at the same time serving his beneficiaries in the most effective manner.

c. Responsibilities. Counsel has had the sole responsibility of representing the Successor Trustee and advising him as to possible legal entanglements.

d. Time. 17 hours and 45 minutes.

APPENDIX B

TYLER, COOPER, GRANT, BOWERMAN & KEEFE
COUNSELLORS AT LAW

[illegible]

Lawrence W. Iannotti, Successor Trustee
under The New York, New Haven and
Hartford Railroad Company's First and
and Refunding Mortgage Dated as of
July 1, 1947
205 Church Street
New Haven, Connecticut 06509

205 CHURCH STREET
NEW HAVEN CONNECTICUT 06509

TO TYLER, COOPER, GRANT, BOWERMAN & KEEFE, DR.

[illegible]r professional services rendered from January 2, 1973
[illegible]rough June 28, 1974, in connection with various matters
[illegible]scribed more specifically below.

. Matters relating to the reorganization of The New York,
[illegible]w Haven and Hartford Railroad Company.

973	
[illegible]y 1, 3, 9, 17, 24,	Review of proposed plan of reorganization of the Debtor proposed to be filed with
[illegible]ne 12,	the Interstate Commerce Commission by
[illegible]ly 5, 6, 9, 10, 11,	Richard Joyce Smith, Trustee of the property of the Debtor; review of posi-
[illegible]t. 1, 9, 11, 16, 26, 29, 30,	tion to be taken in connection therewith and implications for the New Haven estate; consultation with other creditor
[illegible]v. 1, 2,	interests re same; travel to and atten- dance at meetings in the New York office
974	of the New Haven Trustee re plan; prep-
[illegible]b. 21, 25,	aration of petition for order instructing
[illegible]rch 1, 4, 6, 8, 12, 13, 15, 19, 21,	the New Haven Trustee to abandon plan of reorganization and to file a motion to dismiss the Penn Central reorganization
[illegible]ril 2, 25, 30,	under Section 77(g) of the Bankruptcy
[illegible]y 2, 8, 13, 16, 17, 20, 24,	Act; appearance at and conduct of hear- ing in the New Haven Reorganization
[illegible]ne 12, 13, 21, 24,	Court in connection with aforesaid petition; subsequent consultation with other counsel, including New Haven Trustee's counsel, regarding compromise of issue; review of petitions filed by other parties in the New Haven reorgani- zation such as petitions for compensation, settlement of per diem claims and annual and quarterly reports regarding the New Haven estate

BEST COPY AVAILABLE

B. Matters regarding the reorganization of The Penn Central Transportation Company (other than proceedings directly before the Interstate Commerce Commission).

1973	
Jan. 4,	Review of Penn Central Trustees' reports to the Penn Central Reorganization Court re reorganization planning; review of proposed steps in Penn Central Trustees' plan of reorganization; review of and discussion with other New Haven interests regarding Pennco settlement pending before the Penn Central Reorganization Court; preparation of position in regard to hearing in Penn Central Reorganization Court subsequent to issuance of Interstate Commerce Commission report on reorganization; attendance at pre-hearing conference and hearing in the aforesaid Court; preparation and presentation of position at hearing urging a cessation of rail services; preparation and filing of a memorandum pursuant to Order No. 1321 in the Penn Central Reorganization Court; preparation of legal memorandum in same proceeding; review of preliminary version of Regional Rail Reorganization Act of 1973 and consideration of effect on Penn Central and New Haven estates; review of opinion of United States Court of Appeals for the Third Circuit regarding proposed sale of Park Avenue properties and effect on New Haven First Mortgage Bondholders' lien; study of Columbus Option opinion of the aforesaid Court; preparation for and attendance at hearing in the Penn Central Reorganization Court on the New Haven Trustee's motion to dismiss the Penn Central reorganization pursuant to Section 77(g) of the Bankruptcy Act; consultation with other New Haven interests to formulate position on motion to dismiss in connection with hearing pursuant to Section 207(b) of the Regional Rail Reorganization Act of 1973; review of Providence & Worcester easements and effect on lien of first mortgage
Feb. 1, 6, 10,	
15, 17, 21, 26,	
Mar. 7, 13,	
Apr. 18, 23,	
July 5, 6, 9,	
Aug. 14, 15,	
Sept. 25, 26,	
Oct. 1, 2, 3,	
8, 9, 10, 11,	
12, 14, 15,	
16, 17, 18,	
19, 22,	
Nov. 15,	
Dec. 27, 28,	
29, 31,	
1974	
Jan. 2, 7,	
Feb. 9, 11, 13,	
15, 21,	
Mar. 4, 7, 15,	
26, 27, 28, 29,	
Apr. 2, 3, 4, 5,	
8, 9, 10, 13,	
14, 15, 16, 17,	
18, 20, 22, 24,	
May 1, 2, 3, 6, 13,	
June 13,	

C. Proceedings before the Interstate Commerce Commission in connection with the reorganization of The Penn Central Transportation Company.

1973 May 10, 24, July 16, 17, 18, 19, 24, 30, Aug. 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, Sept. 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24, 25, 26, 28, Oct. 1, 2, 3, 4, 15, 17, 19, 31, Nov. 1, 2,	Review of plans of reorganization filed by the New Haven Trustee, the Penn Central Trustees and, when subsequently filed, the Penn Central Company; appearance and presentation of position at pre-hearing conference before the Interstate Commerce Commission in Washington, D. C.; adoption of united position by New Haven interests and time-table to permit one party to cover each day of hearing; preparation for hearings by review of evidence submitted by the Penn Central Trustees and New Haven Trustee regarding the valuation of assets, cash position, physical condition of the rail assets, etc.; attendance at hearings on August 13, 16, 17, 23 and 24; preparation of cross-examination of witnesses; review of evidence filed by the Penn Central Company; preparation and filing of brief on behalf of all New Haven creditor interests; preparation and filing of proposed findings of fact; extensive review of transcript in connection therewith; review of late-filed proposed testimony submitted by the United States Department of Transportation; review of briefs filed by other parties including the Penn Central Trustees, the relevant labor unions, the State of New York, the Commonwealth of Massachusetts and further Penn Central Trustees' testimony; extensive review of Interstate Commerce Commission report in connection with the proceedings just then concluded for impact on New Haven Trustee's plan of reorganization and the New Haven estate

D. Matters relating to the Regional Rail Reorganization Act of 1973 in the New Haven Reorganization Court and the Penn Central Reorganization Court.

1974	
Jan. 2, 7, 8, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 29, 30, 31, Feb. 4, 5, 8, 11, 13, 14, 22, 27, 28, Mar. 1, 4, 5, 6, 11, 18, 20, 21, 22, 23, 25, 26, Apr. 1, 17, 19, 23, 24, 30, y 1, 13, 14, 15, 20, 23, 24, June 7, 11, 20,	Review of provisions of statute and development of strategy to protect New Haven estate; telephone conferences with other New Haven counsel regarding procedural steps to be taken in connection with anticipated proceedings under the Act; attendance at meetings of New Haven interests and of major creditor and governmental interests in Washington offices of Messrs. Sullivan & Worcester regarding strategy to be pursued by the New Haven Trustee; discussions and negotiations with counsel for the New Haven Trustee regarding the need to pursue his motion under Section 77(g) of the Bankruptcy Act; preparation for and attendance at hearing in the New Haven Reorganization Court pursuant to Section 207(b) of the Act; review of Penn Central Trustees' evidence and New Haven Trustee's memorandum for Section 207(b) hearing before the Penn Central Reorganization Court; review of pleadings for said hearing; attendance at the aforesaid hearing in the Penn Central Reorganization Court; extensive review of Order No. 1512 of the Penn Central Reorganization Court; review of pleadings and briefs filed by counsel for the New Haven Trustee in various courts under the Act and conferences with other New Haven interests in regard to pending litigation

E. Advice on various administrative matters involving the Successor Trustee.

1973	
Jan. 4, 8,	Review of possible problems created by
Feb. 19,	Rule 10b-5 under the Securities Exchange
Mar. 16, 22, 28,	Act of 1934 and information regarding
Apr. 18, 23,	the New Haven estate; review of New
May 1, 3, 13,	Haven Trustee's Annual Reports; prepara-
17, 18,	tion of letters to First Mortgage
June 1, 4, 7,	Bondholders accompanying New Haven
28,	Trustee's Annual Reports; consideration
Aug. 14, 15,	of possible sending of letter to Bond-
Sept. 25, 26,	holders in regard to pending develop-
	ments in light of passage of Regional
1974	Rail Reorganization Act of 1973
Jan. 3, 4, 8,	
15, 20,	

Total for services rendered.....$33,750.00

DISBURSEMENTS

Date Paid		
1973		
January 9	Payment to Messrs. Cohen, Shapiro, Polisher, Shiekman & Cohen, local counsel in Philadelphia for disbursements	
May 4	Payment to Messrs. Cohen, Shapiro, Polisher, Shiekman & Cohen for services rendered as local counsel	$ 14.45
May 11	Payment to William J. Mack Company, North Haven, Connecticut, printers, for copies of annual report of the New Haven Trustee sent to First Mortgage Bondholders	379.50
uly 12	Travel round trip to New York	300.69
uly 23	Expenses for two round trips to Washington, D. C. to attend Interstate Commerce Commission hearings on July 13 and 17	25.00
gust 15	Air fare round trip to Washington, D. C. to attend hearings at the Interstate Commerce Commission	252.54
just 15	Payment to V. F. McNeil for premium for Trustee's bond	73.27
just 24	Miscellaneous expenses for taxis and meals in Washington, D. C. incurred on August 13, 16 and 17	40.00
st 30	Expenses for hotel room, taxis, meals incurred during two-day stay in Washington, D. C. from August 23 through 24	15.10
mber 4	Round trip air fare for trip made on August 16, 1973, to Washington, D. C.	76.00
mber 4	Roundtrip air fare for trip made to Washington, D.C. on August 23, 24, 1973	73.91
		73.91

September 10	Round trip train fare from New York to to New Haven and taxis for meeting held on September 7, 1973	14.00
October 9	Expenses incurred in Washington, D. C. during period August 15-16 while attending Interstate Commerce Commission hearings	52.72
October 10	Train fare and taxis for round trip from New Haven to Philadelphia, Pennsylvania, to attend hearing before the Penn Central Reorganization Court	21.20
October 16	Travel expenses, hotel and meals for two-day stay in Philadelphia from October 11-12	99.64
October 22	Check to Clerk of the United States Court of Appeals for the Third Circuit for copy of opinion in the Penn Central reorganization	1.00
October 24	Check to Clerk of the United States Court of Appeals for the First Circuit for copy of opinion in the Boston and Maine reorganization	1.00
vember 13	Check to Sanders, Cale & Russell, Inc., New Haven, Connecticut, Court Stenographers for transcript of proceedings before the New Haven Reorganization Court	44.00
December 15	Overtime to prepare petitions before the Interstate Commerce Commission	16.71
	Postage during the course of the year	59.53
	Telephone calls	118.74
	Expense for 4482 Xerox copies	224.10
Total of disbursements from January 2, 1973 through December 31, 1973		$ 1,977.01

1974

January 16	Round trip for two lawyers by train to New York City	$ 20.00
January 18	Two round trip tickets by Metroliner to Washington, D. C.	104.30
ebruary 4-5	Payment for two hotel rooms for co-counsel to attend hearing in New Haven Reorganization Court	53.16
March 25	Railroad ticket and other expenses from New Haven to Philadelphia and back	60.04
April 14-15	Travel to Washington, D. C.	42.53
May 6	Travel to Philadelphia	29.75
y 16	Payment to William J. Mack Company for copies of the annual report of the New Haven Trustee sent to First Mortgage Bondholders	
Total disbursements from January 2, 1974 through June 28, 1974		343.68
		$ 653.46
Total disbursements from January 2, 1973 to June 28, 1974		$ 2,630.47

Total for services rendered		$33,750.00
Disbursements		
January 2, 1973 - December 31, 1973	$1,977.01	
January 2, 1974 - June 28, 1974	653.46	
		$ 2,630.47
Total due and owing		$36,380.47

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In the matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	)	In Proceedings for the Reorganization of a Railroad
	)	No. 30226

MEMORANDUM OF INTERSTATE COMMERCE COMMISSION
IN SUPPORT OF MOTION FOR STAY

This memorandum is submitted in support of the Interstate Commerce Commission's Motion for Stay Pending Appeal. For the reasons set forth below, the Interstate Commerce Commission submits that its Motion for Stay Pending Appeal should be granted.

1. Pursuant to an opinion and order on certain applications, pursuant to §77(c)(12) of the Bankruptcy Act, for compensation and for reimbursement of expenses incurred on behalf of the above-captioned bankrupt estate, this Court entered a judgment on June 30, 1976, awarding compensation and reimbursement expenses which in the aggregate totaled more than $3,000,000.00.

2. By the terms of the judgment one-half of the allowed expenses are to be paid out of the debtor's estate on or before January 6, 1977, and one-eighth of the compensation allowed is to be paid on or before September 30, 1976.

3. If the Interstate Commerce Commission ultimately prevails on appeal, any disbursements theretofore made pursuant to the terms of the judgment may be difficult, if not impossible, to recover.

WHEREFORE, the Interstate Commerce Commission respectfully submits that the circumstances warrant a stay of the Court's judgment pending appeal in order to maintain the status quo.

Respectfully submitted,

ARTHUR J. CERRA
General Counsel

CHARLES H. WHITE
Associate General Counsel

KENNETH G. CAPLAN
Attorney
Interstate Commerce Commission
Washington, D.C. 20423
(202) 275-7740

Attorneys for the Interstate Commerce Commission

RECEIVED
AUG 27 1976
OFFICE OF
GENERAL COUNSEL

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IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

TRUSTEE'S OPPOSITION TO MOTION OF INTERSTATE COMMERCE COMMISSION FOR STAY OF JUDGMENT OF JUNE 30, 1976 PENDING ITS APPEAL

COMES NOW Richard Joyce Smith, Trustee of The New York, New Haven and Hartford Railroad Company (New Haven), Debtor herein, and respectfully requests this Court to deny the Motion of the Interstate Commerce Commission (ICC) for a stay pending its appeal from the judgment of this Court entered on June 30, 1976 on the following grounds:

I.

This Court's Orders of April 14, 1976 are res judicata and binding upon the ICC that, by virtue of § 618(b) of the RRRR Act, all powers and duties of the ICC under § 77 of the Bankruptcy Act with regard to proceedings for reorganization of the New Haven terminated as of February 5, 1976, and then became

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vested in this Court, including the adjudgment of fees and expenses under both § 77(c)(2) and § 77(c)(12) and whether the fees and expenses related to services rendered before or after February 5, 1976.

II.

The ICC's Appeal from the judgment of June 30, 1976 is frivolous.

1. The issues which the ICC states that it proposes to raise on the appeal are not real issues in the context of this case.

2. The appeal is an impermissible collateral attack upon the Order of April 14, 1976.

3. The ICC has no standing to appeal from the Court's judgment on the merits of June 30, 1976.

4. The ICC made no objections or legal challenge until this appeal either as to jurisdiction or the merits during the proceedings that culminated in this Court's judgment of June 30, 1976; and may not now be heard on an appeal from that judgment.

III.

The ICC is not entitled to a stay because it fails to show, *inter alia*, that there is a likelihood it will prevail on appeal, or that any injury will be suffered if the judgment is reversed or modified.

RICHARD JOYCE SMITH, Trustee of The New York, New Haven and Hartford Railroad Company, Debtor.

By JAMES WM. MOORE
Counsel for Trustee

Dated: July 29, 1976.